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LAW OF ALIENS AND NATURALIZATION.

BY THE SAME AUTHOR.

**The Return of the Jews to
.. England ..**

BEING

A CHAPTER IN THE HISTORY OF
ENGLISH LAW.

(MACMILLAN & Co. : 3s. 6d.)

THE LAW OF
ALIENS
AND
NATURALIZATION

INCLUDING
THE TEXT OF THE ALIENS ACT, 1905.

BY
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πρὸς γὰρ Διὸς εἰσιν ἅπαντες
ξείνοί τε πτωχοί τε.

HOM. *Od.* vi. 207 and xiv. 57

“And if a stranger sojourn with thee in your land, ye shall not vex him.
But the stranger that dwelleth with you shall be unto you as one born among
you, and thou shall love him as thyself; for ye were strangers in the land
of Egypt.”—Lev. xix. 33, 44.

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PREFACE.

NO Treatise on the Law of Aliens has been published for more than sixty years, since which time all the Naturalization Acts now in force and the Aliens Act have been passed. It is therefore thought that the present Work may be not unwelcome to the profession and the public. It was originally intended to issue the book before the Aliens Act of 1905 came into operation, but some delay was caused owing to the Rules and Orders under that Act not being in the hands of the Author until the month of January. It is believed that modifications will shortly be made in these Rules by the Home Office, and no doubt further alterations will from time to time be made; nevertheless it is hoped that the operation of the Act is sufficiently described in Chapter VI.

4, KING'S BENCH WALK,
TEMPLE,

March 12th, 1906.

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ERRATA.

On page 20, note (*r*). "22 Car. 2" *should be* "25 Car. 2."

On page 31, line 2. "Saxony" *should be* "Gascony."

N.B.—That part of the Order dated December 19th, 1905, which provides that a ship carrying twelve alien steerage passengers shall be an "immigrant ship," has been withdrawn while these pages were in the press. The necessary correction should therefore be made on pp. 144, 190, and 192, and also in paragraph 3 of the Memorandum published in February, which will be found in the Appendix.

ALIENS AND NATURALIZATION.

HISTORICAL SURVEY.

FROM the very earliest times foreigners in large numbers have entered England. When the period of invasion and conquest had ended, and the Norman and Saxon races merged into a native community, merchants and skilled artisans arrived from time to time in the pursuit of trade and commerce, and to obtain gain from their skill in handicrafts. The religious persecutions engendered by the Reformation greatly increased the volume of immigration from countries of the continent, and after the abatement of the rigour of persecution (which, unfortunately, cannot be said to have altogether died out), the great development of international trade and of the means of communication has tended to maintain the influx and even to increase it.

The subject, therefore, of the rights of aliens in English law has always been of importance; it cannot, however, be said to be free from obscurity, though very few legal treatises have been exclusively devoted to its elucidation (*a*).

Rights of Aliens under the Ancient Common Law.—There is some ground for saying that by the ancient

(*a*) There is, of course, Mr. George Hansard's excellent treatise on the law relating to aliens, which was published as long ago as 1844, with a supplement dated two years later, and which has been of great service to the present author.

law an alien had no legal rights whatsoever, at least in so far as he could not maintain an action in a court of law for any injury that might be done either to his property or his person. LITTLETON says: "Also there are six manner of men against whom, if they sue, judgment may be demanded," and enumerates the six classes as follows: (1) A villein suing his lord; (2) a man outlawed; (3) an alien; (4) a man placed by judgment on a writ of *præmunire* out of the King's protection; (5) a man entered and professed in religion; (6) a man excommunicated by the law of holy church. Of the alien he says: "The third is an alien which is born out of the ligeance of our Sovereign Lord the King, if such alien will sue an action, real or personal, the tenant or defendant may say that he was born in such a country, which is out of the King's allegiance, and ask judgment if he shall be answered." Sir Edward COKE, in his commentary on this passage, confines the full effect of it to the case of alien enemies, or such as are subject to a king at war with England, adding, "but an alien that is in league shall maintain personal actions, for an alien may trade and traffic, buy and sell, and therefore of necessity he must be of ability to have personal actions; but he cannot maintain either real or mixed actions." (b). This, no doubt, is a true statement of the law as it existed in the early part of the seventeenth century, but it is possible to suppose that a considerable development, rendered necessary by the great increase of alien immigration, had taken place since the Wars of the Roses. It is probable that the distinction between alien friends and alien enemies was not fully recognised in times before

(b) Lit. s. 198. See Co. Lit. 128a, 129a, b. It should be observed that COKE only recognises as alien friends persons between whose government and ours there is a league or treaty. "Leagues," he says, "between our Sovereign and others are the only means to make aliens friends, *et foedera percutire* to make leagues only and wholly perttainable to the King" (7 Rep. 25b).

international intercourse by means of permanent embassies or legations, had been established and treaties of commerce and intercourse were regularly made. Moreover, the injustice of the ancient law towards aliens was to some extent mitigated by the protection given by the criminal law from acts of open violence, and by the practice of foreigners obtaining a safe conduct from the King, or seeking the protection of some powerful individual able and willing to defend them; and also in the case of merchants by the special tribunals set up in their favour, and the injunctions laid upon the King's justices to administer in cases where they were concerned the law merchant which in mercantile transactions was applied as a kind of *jus gentium* rather than the harsher rules of the common law (c). Nor at a time when personal property was generally held of little importance in comparison with realty, would it seem at all incongruous that aliens who could not hold any real estate should also be debarred from enforcing in the law courts any claim they might have to personal chattels or any contract they might have made, whether relating to land which they could not hold, or other property which they were allowed to possess.

Disability of Aliens to Hold Land.—The disability of aliens to hold lands or any real estate naturally followed from the feudal principles upon which the land system of the country was based, and was consequently retained long after the right to bring personal actions had been conceded to all aliens not the subjects

(c) See, for example, the Statute of Acton Burnel (11 Edw. 1), and the Statute of the Staple (27 Edw. 3, st. 2, c. 20, and 36 Edw. 3, c. 7). The latter provides that "the merchants aliens (be they plaintiffs or defendants) may sue their plaints and quarrels, as well of trespass as of other what they will, before the Mayor of the Staple, by the Law of the Staple or elsewhere at the common law, as is contained in the said Statute of the Staple." On the whole subject, see Pollock and Maitland's *History of English Law*, p. 448.

of a hostile state. By the feudal law every tenant of lands owed fealty to the lord of whom his lands were holden. In England the King is the ultimate feudal lord and owner of all lands, and an alien owing allegiance to a foreign prince was held incapable of taking the oath of fealty which imposed obligations that might be inconsistent with the fidelity due to his own sovereign. An alien, therefore, could not hold any real estate, but any interest he might acquire in real property was forfeited to the Crown "upon office found." "If," says COKE, "an alien Christian or infidel purchase houses, lands, tenements, or hereditaments to him and his heirs, albeit he can have no heirs, yet he is of capacity to *take* a fee simple, but not to *hold*. For, upon an office found" (that is, upon the inquest of a proper jury) "the King shall have it by his prerogative of whomsoever the land is holden; and so it is if the alien doth purchase land and die, the law doth cast the freehold and inheritance upon the King" (*d*). The rule applied not only to real estate but also to any interest in land other than freehold, such as a lease or term of years. As early as the reign of Edward the First an exception to this harsh rule became grafted upon and embodied in the law. For the benefit of commerce, alien merchants were allowed to hold leases of houses or premises for the residence of themselves and their families, or for the purpose of the trade or business carried on by them. "But as to a lease for years, there is a diversity between a lease for years of a house for the habitation of a merchant stranger being an alien, whose king is in league with ours, and a lease for years of lands, meadows, pastures, woods, and the like. For if he take a lease for years of lands, meadows, etc., upon office found, the King shall have it. But of a house for habitation he may take a lease for years as incident

(*d*) Co. Lit. 2b. If, however, the purchase was made with the King's license, it seems he might hold. See Mr. Hargrave's note 2.

to commerce; for without habitation he cannot merchandise or trade. But if he depart or relinquish the realm, the King shall have the lease. So it is if he die possessed thereof, neither his executors nor administrators shall have it; for he had it only for habitation as necessary to his trade or traffic, and not for the benefit of his executor or administrator. But if the alien be no merchant, then the King shall have the lease for years, albeit it were for his habitation, and so it is if he be an alien enemy" (e). This exception is an instance of the special indulgence always shown to merchants by the common law, which in cases where they were concerned, followed and embodied within itself the *lex mercatoria* as a sort of *jus gentium*. To prevent the exception being still further extended the legislature in the year 1540 passed a statute (32 Hen. 8, c. 16, s. 13) enacting that "all leases of any dwelling house or shop within this realm or any the King's dominions, made to any stranger, artificer, or handicraftsman, born out of the King's obeissance, not being denizen, shall be void and of none effect," and also imposing a penalty of 100s. both upon any person granting any such lease to an alien artificer or handicraftsman and the alien artificer taking it (f). The courts, however, interpreted the statute favourably to the alien, and held him entitled to have any holding which could be construed as a tenancy at will. A tenancy at will, therefore, was the only interest in land which an alien, not being a merchant, could hold. No amendment of the law was made until 1844, when Mr. Hutt's Naturalization Act conferred the right of holding lands upon all aliens, whether merchants or not. But the right was still strictly limited to lands held for the purpose of residence or occupation by the

(e) Co. Lit. 2b.

(f) It will be observed that at common law the lease was good as between the parties but forfeitable to the King. The statute makes it void altogether.

alien or his servants, or for the purpose of any business, trade, or manufacture, and to terms not exceeding twenty-one years (*g*). At length, in 1870, the present Naturalization Act gave the alien the unrestricted right to hold land and real property of every description, and also to dispose of it as freely as a natural-born subject (*h*).

Though an alien might acquire lands by purchase, subject to the right of the Crown to forfeit them upon office found, yet he could not obtain any interest in real property by an act of the law, for "the law giveth the alien nothing"; therefore, if a woman alien married a British subject, she would not be entitled to dower (*i*), neither could an alien be tenant by the curtesy (*k*) nor take lands by descent as heir. However, as early as 1420, by a special Act of Parliament (not printed, Rot. Parl. 8 Hen. 5, n. 15) all women aliens who from thenceforth should be married to Englishmen *by licence of the King* are enabled to demand their dower on the death of their husbands, to whom they should in time to come be married in the same manner as English women (*l*). Moreover, the Naturalization Act of 1844, by providing that an alien woman married to a British subject should have all the rights and privileges of a natural-born subject (*m*), gave foreign women, married to English husbands, the right to dower, although a licence from the Crown had never been obtained. The later Naturalization Act of 1870 gave aliens the right of claiming curtesy in their wives' estates and also of acquiring land by inheritance (*n*).

(*g*) 7 & 8 Vict. c. 66, s. 5.

(*h*) 33 & 34 Vict. c. 14, s. 2. For the whole subject, see Blackstone, Vol. 2, p. 293; Bac. Abr. Aliens C. & Com. Dig. Aliens C., Co. Lit. 2b, 310b.

(*i*) See *Count de Wall's Case* (1848), 6 Moo. P. C. 216.

(*k*) *Calvin's Case*, 7 Rep. 25a.

(*l*) Hargrave, note 9 to Co. Lit. 31b.

(*m*) 7 & 8 Vict. c. 66, s. 16.

(*n*) 33 & 34 Vict. c. 14, s. 2.

Formerly Descent could not be traced through an Alien Ancestor.—By the common law an alien was not only incapable of inheriting real property, but was also held to have no heritable blood, and therefore no descent could be traced through him. For if an alien came into England and then had issue two sons, both of whom would be natural-born subjects, and one of them purchased land and died without issue, his brother could not be his heir even although the father were dead (o). This rule was altered in the year 1700 by the statute 11 & 12 Will. 3, c. 6, which enacted that all persons being the King's natural-born subjects shall lawfully inherit and make their pedigrees and titles by descent from any of their ancestors, either lineal or collateral, although such ancestors from, through, or under whom they claim were born out of the King's allegiance. In 1751 another Act (25 Geo. 2, c. 39) was passed to explain this statute, which was rendered unnecessary by the provisions of s. 2 of the Naturalization Act, 1870, and repealed by s. 18 of that Act (p).

Aliens and Personal Property.—In regard to personal property other than chattels real, such as leaseholds, an alien, whose sovereign was in league with ours, never, it seems, laboured under any disability; and such property he could acquire, hold, and dispose of as freely as a natural-born subject. In this respect the law of England was more beneficial to foreigners than that of most of the continental nations; for the *droit d'aubaine* or *jus albinagii* vesting in the Crown the possessions of a dead stranger, which lingered on in France up to the time of the great Revolution, never existed here (q).

(o) Co. Lit. 8a. And see Hargrave's note 2.

(p) 33 & 34 Vict. c. 14, ss. 2, 18. The Explanatory Act (25 Geo. 2, c. 39), was not repealed, and still remains on the statute book.

(q) For the history of the *droit d'aubaine*, see Wheaton's International Law, s. 82.

An Alien's right to bring Personal Actions.—Even if we admit LITTLETON's statement that by the ancient common law an alien could not maintain a personal action, in the case of merchants, as we have seen, this disability had been practically removed by the provisions of the statute relating to the Staple even before LITTLETON's time; and shortly afterwards the courts of common law recognised the right of aliens, even though not merchants, to sue in all personal actions, and refused to accept the plea that the plaintiff was an alien unless it was also pleaded and proved that he was an enemy of the King. Thus early in the reign of Henry VIII. it was held that an alien could maintain an action of debt, and in the reign of James I. that an alien could maintain an action for slander, though in the latter case one of the five judges dissented on the ground that an alien could have no personal action except for the protection of his trade or merchandise: this view was overruled by the other four judges, and the right of an alien friend to sue in any personal action has not since been disputed (r).

An Alien unable to Own a British Ship.—However, in comparatively modern times, one qualification to the otherwise unrestricted right of an alien to hold personal property of every description has been ordained by the legislature in pursuance of the policy of encouraging British as against foreign shipping, embodied in the Navigation Acts. Many of the provisions of those Acts have been repealed, but the incapacity of owning any British ship or any share of such ship, originally imposed by them, has been retained and confirmed by recent legislation (s).

(r) *Vide* Dyer, 2b (6 Hen. 8); *Tirlot v. Morris* (1611), 1 Bulst. 134; Yelv. 198.

(s) See the Naturalization Act, 1870 (33 & 34 Vict. c. 14), s. 14, and the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 1. For the old legislation, see 12 Car. 2, c. 18, s. 10; 13 Geo. 3, c. 26; 6 Geo. 4, c. 110, ss. 5, 14, and other statutes.

The right to Exclude or Expel Aliens from the Realm.

—Having already summarised the legal rights of alien friends established here, it should be observed that the common law did not give aliens the right of entering the country or of permanent residence once an entrance had been obtained. The King as *custos regni* had at common law the prerogative of dealing according to his discretion both with foreign states and foreign individuals, and the prerogative remains intact except in so far as it has been cut down by Act of Parliament or abandoned by being allowed to fall into desuetude. The King, therefore, has the power of making peace or declaring war, of making treaties, leagues, or alliances, and of sending and receiving ambassadors or other diplomatic agents to conduct intercourse with any foreign nation or prince. “Upon exactly the same reason,” says Blackstone, “stands the prerogative of granting safe conducts, without which, by the law of nations, no member of one society has a right to intrude into another” (*t*). At the common law, therefore, the King had full power to close the realm against, or to expel, any foreigner. To again quote Blackstone, “Great tenderness is shown by our laws not only to foreigners in distress, but with regard also to the admission of strangers who come spontaneously. For so long as their nation continues at peace with ours, and they themselves behave peaceably, they are under the King’s protection, though liable to be sent home when the King sees occasion” (*u*). This wide power of the King of rejecting and expelling aliens has been considerably curtailed by statute, and has become dormant, if not altogether extinct, through want of use in recent times.

The prerogative was considerably cut down in favour of merchants by the well-known clause of Magna Charta, which provided that “all merchants shall have

(*t*) Bla. Com. I. 259.(*u*) Bla. loc. cit.

their safe and sure conduct to depart out of, to come into and to tarry in and go through England as well by land as by water for the purpose of buying and selling without any manner of evil tolls but subject only to the ancient and approved customs, except in time of war. And if they be of a land making war against us, and be found in our realm at the beginning of the war, they shall be attached without harm of body or goods until it be known . . . how our merchants be intreated in the land making war against us, and if our merchants be well intreated there, theirs shall be likewise with us." Although this limitation of the royal prerogative extended to merchants only, and the King could still exclude or banish any other foreigners, it was felt that the law had been made too liberal to merchant strangers, and the words "*nisi publice antea prohibiti fuerint*" were inserted at the beginning of the clause when the charter was reissued in the reign of Henry III. Lord COKE, in commenting upon these words, says that the word "*publice*" is used to indicate that the prohibition must be by the common or public council of the realm, that is, by Act of Parliament (x).

But in spite of this opinion the Crown has at various times issued proclamations banishing aliens from the realm without making any express exception of merchants. It is said (y) that the last time when the right of the Crown to expel foreigners was exercised on a large scale was by Elizabeth in 1575, but it was still claimed on behalf of the Crown as an existing branch of the prerogative until the Revolution (z).

(x) 9 Hen. 3, c. 30; Co. II. Inst. 57. Lord COKE's interpretation of the word "*publice*" was by no means universally accepted by legal authorities. See Lord ELDON's speech on the Aliens Bill of 1816 (Parl. Deb., Vol. 34, p. 1065).

(y) Taswell-Langmead's Constitutional History, p. 555 (note). See also L. Q. R., Vol. 13, pp. 178, 179.

(z) See the argument of Sir Robert Sawyer (Attorney-General) in the *East India Co. v. Sandys*, How. St. Tr. X., p. 457 *et seq.*

It has often been thought remarkable that in the contract between the King and his people, intended to confirm and secure the rights of the latter, this privilege should have been conferred upon alien merchants, who were always regarded by their native rivals with jealous eyes. The fact would seem to be that this particular limitation of the royal power was made at the instigation of the barons who found the presence of foreign merchants profitable and did not wish that the King should retain the power of banishing them at the solicitation of their English competitors. This is borne out by an extract from the Parliament Roll of 1290, quoted by Sir EDWARD COKE: "*Cives London petunt quod alienigenæ mercatores expellantur a civitate, quia ditantur ad depauperationem civium, etc.*"

"*Responsio: Rex intendit quod mercatores extranei sunt idonei et utiles magnatibus et non habet consilium eos expellendi.*" (a).

The earlier Alien Acts.—This branch of the prerogative not having been put in force since the reign of Queen Elizabeth, has been allowed to fall into desuetude, and may be regarded as no longer existing. Accordingly, after the outbreak of the French Revolution, in consequence of the widespread alarm aroused by the large number of refugees and other foreigners arriving in this country, it was found expedient to pass an Act of Parliament which regulated the landing of aliens and empowered the Crown to direct, by Proclamation or Order in Council, that any alien or aliens should depart from the realm, and to make regulations for the

(a) II. Inst. 741; Rot. Parl. 18 Edw. 1, No. 112. The quotation here is from COKE, who considerably abridges the entry in the Roll. It should be observed that this very year Edward banished the Jews and received from Parliament the grant of a fifteenth "*pro expulsionem Judæorum*," some of whom were not aliens but villeins of the King. See Henriques, *The Return of the Jews to England*, pp. 7—14.

landing and subsequent residence of foreigners, and also to summarily imprison and expel any alien who had disobeyed, or was even suspected of being about to disobey, any royal Proclamation, or had committed a breach of any of the regulations so made, or certain other offences. The Act known as Lord Grenville's Alien Act, 1793 (33 Geo. 3, c. 4), was a temporary one, but was renewed periodically during the French War, and (though with considerable modifications) even after the declaration of peace until the year 1826, when it was finally abandoned, but the system of the registration of aliens, which had been enforced by the temporary Alien Acts was still kept up, the Act for the Registration of Aliens, 1826 (7 Geo. 4, c. 54), being passed for that purpose. This Act was repealed by the Registration of Aliens Act, 1836 (6 & 7 Will. 4, c. 11), which freed aliens resident here from the necessity of making every six months a declaration concerning their place of residence imposed by the former Act, but yet retained its main provisions, whereby the master of any vessel arriving from foreign ports was bound to declare in writing what aliens he had on board, and aliens landed here were compelled, immediately after their arrival, to make a declaration before the chief officer of Customs at the port of debarkation, and also to produce for his inspection any passports in their possession. The duties cast upon newly-arrived aliens were allowed, partly, no doubt, owing to the abolition of passports, to be disregarded, and those imposed upon shipmasters were not strictly enforced at all ports, the Act itself being finally repealed in the present year by the new Aliens Act (5 Edw. 7, c. 13), the fifth section of which, however, retains a portion of the former enactment by providing that the master of any ship landing or embarking passengers at any port in the United Kingdom shall furnish a return, giving such particulars with respect to any such passengers who are aliens as may be required for the time being, by order of the Secretary of State, and that any alien

passenger shall give the master the information about himself necessary for making the return.

In the revolutionary year of 1848 it was again found expedient to assert the right of expelling foreigners, and an Act of Parliament was thought necessary for the purpose. Accordingly the statute 11 & 12 Vict. c. 20, was passed, which vested in any one of the principal Secretaries of State the power to order any alien, whom it might be thought expedient to remove, to depart from the realm within a limited time. The power, which was never actually put into force and was only given for the space of one year, lapsed at the end of the Parliamentary Session of 1849, and has never been renewed.

The Aliens Act, 1905.—Again, in the present year, when it was desired to provide for the exclusion or expulsion of certain classes of aliens, denominated undesirable in the report of the Royal Commission on Alien Immigration, issued in the year 1903, it was found necessary to proceed by legislation in Parliament. The result is the Aliens Act, 1905 (5 Edw. 7, c. 13), which prevents the landing from an immigrant ship of any alien, without the leave of an immigration officer (subject to an appeal to the immigration board), who appears to be undesirable as defined by the Act, and further empowers the Secretary of State to make expulsion orders in the case of aliens who have been (1) convicted here of serious offences; or (2) have been certified within twelve months after their arrival to have been in receipt of parochial relief or found wandering without ostensible means of subsistence, or been living under insanitary conditions due to overcrowding; or (3) have arrived here since the passing of the Act, and been sentenced in a foreign country for an extraditable crime not of a political character.

The Prerogative of the Crown as regards Aliens.—The necessity of having legislation upon this subject in

order to vest in officers of the Crown powers which it once claimed to possess at common law, indicates that the right of the Crown—formerly claimed and exercised without any public protest—to close the realm against alien friends and send foreigners out of the kingdom, no longer exists. It should be added that the loss of this power in ordinary cases has long been recognised, though as late as 1816 Lord ELLENBOROUGH roundly asserted in the House of Lords, in his speech on the Aliens Act of that year, that it still existed (b) ; but it was for some time afterwards thought that the Crown retained the right to surrender fugitive criminals whose extradition was demanded by their own Sovereign on account of crimes committed abroad ; but there is no doubt that at the present time the prerogative has been shorn of this limited right also, and that no extradition can take place unless preceded by proceedings, conducted in strict accordance with the Extradition Act of 1870 (33 & 34 Vict. c. 52) (c). An alien, therefore, arrested or imprisoned with a view to deportation or expulsion, is entitled, in the same way as a natural-born subject, to apply for a writ of *habeas corpus* ; and when, if he has been illegally detained, he has thus obtained his liberty, he may bring an action for damages for assault or false imprisonment against any one who has wrongfully interfered with him (d).

(b) Parl. Deb., Vol. 34, p. 1069. And see also the Lord Chancellor's speech at p. 1065.

(c) See the opinion of Serjeant Hill given to the Government in 1792, and quoted in Clarke on Extradition, p. 25 ; Forsyth's Cases and Opinions on Constitutional Law, pp. 181, 369 *et seq.* ; and Dicey's Law of the Constitution, p. 220 (note 2).

(d) An alien has not, however, a legal right, enforceable by action, to enter British territory (see *Musgrove v. Chun Teeong Toy*, [1891] A. C. 272, at p. 282, on which, see note, 7 L. Q. R., p. 299), though an alien friend can now only be excluded in accordance with provisions of the Aliens Act, 1905. For a discussion of the whole subject, see two articles in Law Quarterly Review, Vol. VI., p. 27, and Vol. XIII., p. 165, which take the two opposite views as to the Crown's prerogative.

Right of the Crown to grant safe conducts and licences to trade to Alien enemies.—Though this branch of the prerogative has been considerably curtailed, the Crown still retains two important powers relating to aliens: it may grant safe conducts or licences to trade to alien enemies and may invest any alien, whether friend or enemy, with most, though not all, of the rights of natural-born subjects, by granting him letters of denization. Both these powers are part of the ancient prerogative of the Crown, and have been recognised as valid by Acts of Parliament. “The King only,” says Sir EDWARD COKE, in his report on *Calvin’s Case*, “without the subject, may make not only letters of safe conduct, but letters patent of denization, to whom and how many he will, and enable them at his pleasure to sue any of his subjects in any action whatsoever, real or personal, which the King could not do without the subject, if the subject had any interest given unto him by the law in anything concerning an alien born. Nay, the law is more precise herein than in a number of other cases of higher nature; for the King cannot grant to any other to make of strangers born, denizens; it is by the law itself, so inseparably and individually annexed to his royal person (as the book is in 20 Hen. 7, fol. 8). For the law esteemeth it a point of high prerogative, *jus majestatis et inter insignia summæ potestatis* to make aliens born subjects of the realm and capable of the lands and inheritances of England in such sort as any natural-born subject is” (e).

Whatever may have been the rights of alien friends by the ancient common law, it is certain that alien enemies had no rights or privileges whatsoever, unless by the King’s special favour; but the King, who has the power of entirely removing the state of war by making peace with the hostile government, has also the power of

removing it in part by permitting such intercourse as he sees fit with the subjects of the hostile government, which is a partial suspension of the war. This power was in olden times exercised by granting safe conducts which, in order to be effectual, had formerly to be in accordance with the provisions of several ancient statutes (*f*), but is now more usually effected by passports under the King's sign manual or licences from his ambassadors abroad, which are held to be of equal validity (*g*). The Crown may likewise give special licences to any subject to trade with alien enemies, and it is usual upon the outbreak of war to issue a royal Proclamation or Order in Council defining the kinds of trade with the enemy which are to be allowed (*h*), and permitting the subjects or citizens of the hostile country who happen to be settled here, to remain during good behaviour. Persons thus permitted to remain have all the rights and privileges of alien friends. The first occasion upon which this general right to remain here was given to those who would otherwise have been treated as enemies was at the commencement of the seven years' war in 1756, when, in the Declaration of War against France, the King ordered that all Frenchmen who were in his dominions might remain there in perfect security in regard both to their persons and their property provided they demeaned themselves dutifully (*i*). In subsequent wars similar proclamations

(*f*) The statutes are 15 Hen. 6, c. 3 ; 18 Hen. 6, c. 8 ; and 20 Hen. 6, c. 1, which, among other things, made all letters of safe conduct invalid unless made under the Great Seal and also enrolled in Chancery. These statutes were all repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125), but it was probably in consequence of these provisions that the more convenient system of passports and licences was adopted.

(*g*) 1 Bla. Com. 260.

(*h*) See *The Neptune*, Spinks, p. 281. The Orders in Council issued at the commencement of the Crimean war are printed in the Appendix to the volume.

(*i*) Twiss' International Law, Vol. II., p. 86.

have been issued, but without some such general or special protection an alien enemy has no legal rights whatsoever (*k*).

The Prerogative of Creating Denizens.—The creation of denizens by letters patent under the Great Seal is an ancient prerogative of the Crown; whereby the Sovereign is enabled to confer upon an alien many, but not all, the rights of a native of the realm. The letters patent may be temporary or conditional, and may either enumerate the privileges granted, or confer all the rights of a natural-born subject, save such as the patent expressly excepts or the general law of the land withholds from persons made denizens; for the King cannot alter the law otherwise than by Act of Parliament. A denizen so created "*ex donatione regis*" (*l*) is said to be "in a kind of middle state between a natural-born subject and an alien, and partakes of both of them" (*m*), for his patent of denization can have no retrospective effect, and therefore his children born abroad before his denization do not become British subjects unless they are themselves made denizens by being expressly included in the letters of denization (*n*). This prerogative, though fully recognised by Parliament, was not always eyed with favour, and the rights of denizens were, on account of the jealousy which has been so often manifested towards foreigners, cut down by Acts of the legislature; for instance, when aliens were subject to special taxation, they were not allowed to escape the additional duties by obtaining letters of denization from the Crown. (See the statutes 1 Hen. 7.

(*k*) *Sylvester's Case* (1702), 7 Mod. 150, and *R. v. Schierer* (1759). 2 Burr. 765.

(*l*) COKE gives two derivations of the word: (1) *quasi deus née*; (2) from *donation* or *donatio*, because his freedom is given unto him by the King (Co. Lit. 129a).

(*m*) Bla. Com., Vol. I., p. 374.

(*n*) For the law as to denizens, see Co. Lit. 129a; *Calvin's Case* (1608), 7 Rep. 5b, 6a; Bac. Abr. tit. Alien (B).

c. 2; 11 Hen. 7, c. 14; 22 Hen. 8. c. 8; and 25 Car. 2, c. 6.) Moreover, the political capacity of denizens was greatly limited by the third clause of the Act of Settlement, the terms of which indicate the popular dislike of the favouritism shown, after his accession to the throne, by the Prince of Orange to his foreign adherents. The clause, which is still in force, is as follows: "No person born out of the kingdoms of England, Scotland or Ireland or the dominions thereunto belonging (although he be naturalized or made a denizen), except such as are born of English parents, shall be capable to be of the Privy Council or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands or hereditaments from the Crown to himself or to any other or others in trust for him" (12 & 13 Will. 3, c. 2, s. 3).

The right of creating denizens was at one time fully exercised, but since the introduction of the system of naturalization by certificate granted by a Secretary of State, it has gradually sunk into desuetude, and there is no instance of its having been made use of since the year 1872. This circumstance is mainly to be attributed to the wider privileges—especially the capacity to hold land—recently conferred by the legislature upon aliens, and the greater ease with which the fuller rights conferred by naturalization are now obtainable. The right of making denizens was, however, expressly reserved to the Crown by the Naturalization Act of 1870, and the interdepartmental Committee appointed to consider the naturalization laws recommended in their report, issued in 1901, that the above-recited clause of the Act of Settlement, depriving denizens of many of the higher political rights, should be repealed. If this recommendation were carried into effect, patents of denization might again be sought after in most cases where the applicants had been unable to comply with all the conditions laid down by

the Naturalization Act, preliminary to an application for a certificate of naturalization, and so, except in the case of foreign princes, in which the publicity of parliamentary procedure might be thought desirable, supersede private Acts of Parliament for naturalizing aliens, when these are still obtainable.

The Special Taxation of Aliens.—The jealousy of foreigners, which has frequently characterised the English nation, and is often said to arise from its insular geographical position, has not infrequently led Parliament to alter the law relating to aliens to their disadvantage. As the Acts of Parliament have been repealed, it will not be necessary to go through them at any length, or even to enumerate all of them. In the first place, aliens were made liable to special taxation; merchant strangers had to pay the customs (the *custuma antiqua* or *magna*) (o) or ordinary duties upon staple articles of export, such as woolskins or leather, but with this distinction from other merchants, that they had to pay the duties at a higher rate, namely, either half as much again, or double the amount levied upon natives; and the same principle of casting an increased burden upon aliens was frequently extended to other taxes by the various Acts imposing them; for instance, in the Act granting a subsidy of tonnage and poundage to King Charles II. (12 Car. 2, c. 4) and the rules annexed to it, “all merchant strangers bringing in any sorts of the said wines are to pay thirty shillings in the tonne over and above the aforesaid rates which the native pays,” and for lead, tin, and woollen cloths, etc., aliens had to pay double subsidy. Besides having to pay the ordinary duties at a higher rate, taxation was imposed upon aliens from which natives were exempt. This was of two kinds; first, the *custuma parva et nova*, a duty of threepence in the pound upon

(o) See the *Carta Mercatoria* of 1303, confirmed by Edw. 3 in 1328 (Rymer's *Fœdera*, Vol. 2, p. 747), and Co. II. Inst. 59.

all commodities imported or exported by merchant strangers (*p*); and, secondly, a poll tax levied upon all foreigners, whether merchants or not, resident in the country. Under Henry VI. the rates were for (1) all merchant strangers if, not denizens—householders, 40s.; not householders, but resident six weeks within the realm, 20s.; if denizens by letters patent, 10 marks; (2) others not merchants—householders, 1s. 4d.; not householders, 6d. (*q*). After the accession of the Tudors the poll tax upon aliens does not seem to have remained a permanent feature of our national finance. The other additional taxes upon aliens were, however, retained; nor, as has been already seen, could an alien by obtaining letters of denization escape these extra imposts. The additional duty was, nevertheless, remitted in the year 1672 in the case of native commodities (except coals) and goods manufactured in the kingdom exported by aliens (*r*); and, at length, in 1784, Mr. Pitt, as part of the reformation of our fiscal system which he introduced, abolished the alien taxes as having become an unnecessary burthen upon commerce without producing any real advantage to the public revenue (*s*).

Disabilities formerly Imposed upon Aliens by the Legislature.—Parliament has at different times subjected aliens to not only higher taxation, but also to other repressive legislation. For instance, statutes were enacted providing that all or some definite proportion of the moneys acquired by aliens in trade should be employed in the country (see 14 Rich. 2,

(*p*) Blackstone, Vol. 1, p. 315. COKE calls the additional 50 per cent. on the ordinary customs paid by strangers *custuma parva et nova*, and says that it was first granted in the 31st year of Edward I. (IV. Inst. 29; II. Inst. 59). For the origin of the new or small customs, see Dowell's History of Taxation, Vol. 1., pp. 84—88.

(*q*) Dowell's History of Taxation in England, Vol. 1, p. 154.

(*r*) 22 Car. 2, c. 6.

(*s*) See Statute 24 Geo. 3, sess. 2, c. 16.

c. 1, 2; 3 Hen. 7, c. 8), and prohibiting under heavy penalties the export of bullion and gold and silver coin (4 Hen. 4, c. 15; 27 Hen. 6, c. 3), and forbidding merchant strangers to sell by retail to another merchant stranger (16 Rich. 2, c. 1; 5 Hen. 4, c. 9). Moreover, merchant strangers were to have hosts assigned to them in the towns in which they might reside, and to live under their surveyance, paying to the hosts for this privilege the sum of 2*d.* in the pound upon all sales and purchases of merchandise (18 Hen. 6, c. 4). Further, aliens were forbidden to exercise handicrafts (bakers, brewers, surgeons and scriveners being afterwards exempted by 22 Hen. 8, c. 13), except as the servants of natives, or to employ apprentices or servants, except their own children or subjects of the King (1 Rich. 3, c. 9); but were afterwards allowed to keep foreign journeymen provided the number did not exceed two (14 & 15 Hen. 8, c. 2) (*t*).

Again, though alien merchants had been protected and encouraged by Magna Charta and other early statutes, and expressly enabled to carry on their trade, though subject to the restrictions above mentioned, throughout the length and breadth of England, yet, when the colonies and settlements abroad were established, the legislature rigidly excluded merchant strangers from the lucrative and constantly increasing trade with them; for the Navigation Act of 1660 (12 Car. 2, c. 18, s. 2) enacted that no alien, unless naturalized or made a denizen, should exercise the trade or occupation of a merchant or factor in any of the possessions of the Crown in Asia, Africa or America, upon pain of forfeiting all his goods and

(*t*) Most of these provisions are collected and re-enacted in the Statute concerning strangers (32 Hen. 8, c. 16), which having been allowed to become obsolete, was finally repealed by the Statute Law Revision Act of 1863 (26 & 27 Vict. c. 125). For this subject, see COKE on the Statutes of Employments, 2 Inst., p. 741, and Hansard on Aliens, pp. 8 (note), 10, 14, 112, and Chitty's Commercial Law, Vol. 1, pp. 134 *et seq.*

chattels. For the strict enforcement of this enactment s. 4 of the Act for Preventing Frauds and Regulating Abuses in the Plantation Trade (1696, 7 & 8 Will. 3, c. 22) provided that the governor and commander-in-chief of every English colony or plantation should take a solemn oath to see that this and other provisions were punctually and *bonâ fide* observed. This disabling enactment was not relaxed until 1794—and then only in favour of aliens resident in places acquired by the right of conquest—and was finally repealed in 1825 (*u*). The other statutes restrictive of the rights of aliens in respect of trade and commerce, some of which have been enumerated above, having long become obsolete and ceased to be effectively enforced, were, unless formerly abrogated, finally repealed by the Statute Law Revision Act of 1863.

Origin of the Aliens Act, 1905.—Thus, when the Aliens Act of the present year was passed, there were, with the exception of the Registration of Aliens Act 1836, which, as has been seen, was very incompletely enforced, few or no statutory enactments restricting the civil rights of aliens existed; and though fuller information about the provisions of the Act will be found in the chapter specially devoted to it, a brief account of its origin and history finds an appropriate place here. Since the year 1880 a great increase in the volume of alien immigration—caused in part by the persecution in Russia and Roumania of the Jews, who form a large percentage of the immigrants—has been apparent. This increase has been viewed with apprehension, especially in the metropolis and the larger towns, by both rich and poor, the rich fearing that a large number of these immigrants might become a heavy burden on the rates; the poor feeling the competition of the hardworking and abstemious newcomers

(*u*) See 34 Geo. 3, c. 42, s. 6; 37 Geo. 3, c. 63, s. 5; 48 Geo. 3, c. 32, s. 5; and 6 Geo. 4, c. 105.

in the labour market. Moreover, other nations, and in particular the United States of America and our own self-governing colonies, had laws or ordinances enabling the executive to regulate immigration and to prevent the landing of aliens who might be thought "undesirable," and in some cases immigrants rejected by other countries under these regulations sought refuge here. In consequence there arose a considerable agitation for investing our Government with similar powers, and in 1894 the Marquis of Salisbury introduced a measure into the House of Lords for that purpose, but this and other attempts at legislation were unsuccessful. At length, in 1902, a Royal Commission was appointed to inquire into the subject of Alien Immigration; and the next year the Commission made its report, which contained the following results and recommendations:

RESULTS.

262. From the facts placed before us, many of which are above summarised, it seems to be established that a large number of alien immigrants have during the last twenty years entered the country. This number is much in excess of those who had in previous years reached us. The excess is mainly composed of Russians and Poles, who belong for the most part to the Jewish faith. There seems to be no reason to anticipate that under present conditions the number of alien immigrants arriving here in future years will be diminished.

264. We do not think that any case has been established for the total exclusion of such aliens, and it would certainly be undesirable to throw any unnecessary difficulties in the way of the entrance of foreigners generally into this country. But we are of opinion that in respect of certain classes of immigrants, especially those arriving from Eastern Europe, it is necessary in the interests of the State generally, and of certain localities in particular, that the entrance of such immigrants into this country and their right of residence here should be placed under conditions and regulations coming within that right of interference which every country possesses to control the entrance of foreigners into it.

265. Such regulations should, in our opinion, be made in order to prevent so far as possible this country being burdened with the presence of "undesirable aliens" and to provide for their repatriation in certain cases.

266. But we think that the greatest evils produced by the presence of the alien immigrants here are the overcrowding caused by them in certain districts of London, and the consequent displacement of the native population. There seems little likelihood of being able to remedy these great evils by the enforcement of any law applicable to the native and alien population alike. We therefore think that special regulations should be made for the purpose of preventing aliens at their own will choosing their residence within districts already so overcrowded that any addition to dwellers within it must produce most injurious results.

267. We are also of opinion that efforts should be made to rid this country of the presence of alien criminals (and other objectionable characters).

268. We think it must be the duty of those who may have to frame legislation in connection with this subject to remember that they ought not to be content with reviewing its present condition, but also to anticipate, so far as possible, that which is likely to occur in the future. The causes that have so largely tended to produce the conditions above referred to will probably continue, and if this be so the evil will, unless checked by legislative or administrative measures, year by year increase and intensify.

269. For the purpose of carrying the above views into effect we make the following recommendations :

RECOMMENDATIONS.

(1) That the immigration of certain classes of aliens into this country be subjected to State control and regulation to the extent hereinafter mentioned.

(2) That a Department of Immigration be established, either in connection with the Board of Trade and Local Government Board, or of an independent character.

(3) That improved methods be employed to secure correct statistical returns relating to alien immigration. That for this purpose the Act of William IV., c. 11, be repealed, and power given by statute to the Board of Trade to make provision by regulations for obtaining from shipowners returns of the numbers and nationalities of all aliens entering or departing from the United Kingdom, and such further information as may be thought desirable. These regulations to apply to all or any specified ports,

and to be subject to such conditions or modifications as may appear expedient.

(4) That legislative power be obtained for the purpose of carrying out the following suggestions :

- (a) The Immigration Department to have the power of making and enforcing orders and regulations, which may be made applicable to immigration generally, or to vessels arriving at or from certain ports, or to certain classes of immigrants.
- (b) That a sufficient staff of officers be appointed by the Immigration Department to carry into effect the provisions of this Act, and the orders and regulations made under it.
- (c) Power should be conferred upon such officers to make such inquiry as may be possible from the immigrants upon their arrival as to their character and condition, and if such officer shall have reason to think that any immigrant comes within any of the classes mentioned as "undesirables," viz., criminals, prostitutes, idiots, lunatics, persons of notoriously bad character, or likely to become a charge upon public funds, he shall report the case with such particulars as he can give to the Immigration Department.
- (d) It shall be the duty of the Immigration Department to act upon any information it may obtain or receive in order to carry out any provisions which may be made in respect of the above suggestion. And provision should be made for the immediate determination of any proceedings taken before a court of summary jurisdiction on the arrival of the immigrant, pending which the immigrant may be placed under suitable charge.
- (e) Any alien immigrant, who, within two years of his arrival, is ascertained or is reasonably supposed to be :
 - A criminal,
 - A prostitute,
 - A person living on the proceeds of prostitution,
 - Of notoriously bad character ; or
 - Shall become a charge upon public funds, except from ill-health, or shall have no visible or probable means of support,
 - May be ordered by a court of summary jurisdiction to leave this country, and the owner of the vessel on which such immigrant was brought to this country may be ordered to re-convey him to the port of embarkation.

- (f) In reference to all orders of repatriation, due regard must necessarily be had to international arrangements.
 - (g) Such orders and regulations to include provision for medical examination of alien immigrants at port of arrival. In cases where an immigrant is found to be suffering from infectious or loathsome disease, or mental incapacity, the medical officer to have power to debar such immigrant from landing, and the shipowner to be compelled to re-convey the immigrant to port of embarkation.
 - (h) Immigrants on arrival to give the information demanded from them, refusal, or the giving of false information, to be an offence under the Act, with penalty and discretionary power of repatriation at expense of shipping company.
- (5) *Overcrowding.*
- (a) That every effort should be made to enforce with greater efficiency the existing law dealing with overcrowding, and that increased power should be obtained for certain purposes, especially with the object of bringing all dwellings within specified areas under the operation of the byelaws made under the powers of the Public Health Act.
 - (b) That inquiry should be made by the Immigration Department, either upon the representation of the local authority or otherwise, as to the existence of overcrowding in any area.
 - (c) If it be found that the immigration of aliens into any area has substantially contributed to any overcrowding, and that it is expedient that no further newly-arrived aliens should become residents in such area, the same may be declared to be a prohibited area.
 - (d) Full notice that any area has become prohibited should be given at such ports of embarkation as may be thought necessary, and should be communicated to the immigrants by every possible means.
 - (e) That on their arrival in this country inquiry should be made from the immigrants as to their intended destination. If any one should allege his intention of becoming resident in a prohibited area he shall be expressly informed of the regulation affecting prohibition. All immigrants to be furnished with a list, in their own language, of prohibited areas.

- (f) All alien immigrants (not trans-migrants) coming from and arriving at certain ports to be registered. On registration, a place of residence or intended residence to be given by the alien. If none can be given, the alien to furnish such residence as soon as obtained. Any change of residence during the first two years of residence in this country to be notified.
- (g) If within two years after an area is declared to be prohibited, any alien who has arrived in this country after such declaration shall be found resident within such area, he shall be removed therefrom, and shall be guilty of an offence.

(6) Upon conviction of any felony or misdemeanour upon indictment the judge may direct as part of the sentence that the alien convicted shall leave the country. If such direction be disobeyed, the alien may, on summary conviction, be punished as a rogue and vagabond. This power may be extended to convictions for certain offences triable by courts of summary jurisdiction; such offences to be specified by statute.

(7) That further statutory powers should be obtained for regulating the accommodation upon and condition of foreign immigrant passenger ships.

In 1904 the Government brought in a Bill embodying most of the recommendations made by the Commissioners in their Report, but this failed to pass into law, and in the following year a modified measure, completely passing over several of the recommendations, about some of which there had been a considerable difference of opinion among the Commissioners themselves (*x*), was introduced and carried through both Houses of Parliament, eventually becoming the Aliens Act of 1905 (5 Edw 7, c. 13). The Act, which is dealt with at length in a separate chapter, contains these main provisions: (1) It repeals the Registration of Aliens Act, 1836 (6 & 7 Will. 4, c. 11), and in its stead imposes upon the master of any ship landing or embarking

(*x*) See the dissentient Memoranda of Sir Kenelm Digby and Lord Rothschild appended to the Report.

passengers in the United Kingdom the duty of making a return to the Secretary of State giving particulars of any such passengers who are aliens, and compelling such alien passengers to give the requisite information. This new system of making returns as required by order of the Secretary of State will probably prove more useful for the acquisition of information about the numbers and condition of alien immigrants than the former system of registration, which, having been allowed to become obsolete, has now been finally repealed. (2) It empowers the Secretary of State to appoint immigration boards, immigration officers, and medical inspectors to assist the immigration boards and generally to carry out the Act, and to make rules for their guidance and conduct. No immigrant, defined as an alien steerage passenger, has the right of landing without the leave of an immigration officer, who is bound to refuse leave in the case of those who appear to be undesirable immigrants, as defined in s. 1 (3) of the Act. From such refusal an appeal is given to the immigration board, and in some cases there is a further appeal to the Secretary of State. (3) The Secretary of State is invested with the right of making, at his discretion, expulsion orders against aliens who have been (a) convicted here of serious offences, or (b) been certified within twelve months after their arrival to have been in receipt of parochial relief or found wandering without ostensible means of subsistence or been living under insanitary conditions due to overcrowding; or (c) having been previously sentenced in a foreign country for an extraditable crime not of a political nature, have arrived here since the passing of the Act. It will readily be seen that the terms of this Act are considerably milder and more favourable to aliens than the United States Act of March 3rd, 1903; but at the same time are intended to be sufficiently stringent to satisfy the popular wish to exclude some of the worst class of alien immigrants without shutting

out the better class, from which great benefits have undoubtedly accrued to the nation as a whole.

The Distinction between Natural-born Subjects and Aliens founded on the Feudal Doctrine of Natural Allegiance.—It remains to give an historical account of the methods by which British nationality is acquired and lost; in other words, the means by which aliens may become British subjects and British subjects may become aliens. By the common law all persons born within the power or protection of the Crown owe natural allegiance to the King, and are natural-born subjects of the realm, while all who are born out of the allegiance or protection of the King are aliens born, and remain aliens unless they are subsequently made denizens or naturalized. For the law of England has always adopted the feudal or territorial principle of determining nationality by the place of birth alone, and has always, in theory, at any rate, rejected the contrary principle founded on the Roman law and incorporated in the Code Napoleon and the jurisprudence of many modern nations, whereby children, wherever born, are always deemed to possess the nationality of their parents, a legitimate child taking the nationality of the father and an illegitimate child that of the mother. An alien, then, by the common law, is one who “is born out of the ligeance of our sovereign lord the King” (y); but these words will not include everyone not born in the dominions of the King. As COKE says, “note here LITTLETON saith, not out of the realm, but out of the ligeance; for he may be born out of the realm of England yet within the ligeance” (z). And conversely a person, though born within the realm may yet be an alien, if he is born in such circumstances that he cannot be held from the moment of his birth to owe allegiance to the King. Such, for instance, are the

(y) Lit., s. 198.

(z) Co. Lit. 129 a.

children of persons who, by the comity of nations, recognised by our courts as international law, are looked upon as being ex-territorial, *e.g.*, a foreign sovereign or his ambassador or accredited minister; such also are the children of alien enemies, who, as members of an invading army, may have succeeded in occupying part of the King's territory, for these cannot be considered to be even temporarily subjects of the King, for where no protection can be claimed, no allegiance can be due. As Lord COKE says, "It is to be observed that it is *nec cælum, nec solum*; neither the climate nor the soil, but *ligeantia* and *obedientia* that make the subject born; for if enemies should come into the realm and possess town or fort and have issue there, that issue is no subject of the King of England, though he be born upon his soil and under his meridian, for that he was not born under the ligeance of a subject nor under the protection of the King" (a). COKE had previously described ligeance as "*vinculum fidei*," saying, "between the sovereign and the subject there is *duplex et reciprocum ligamen*; *quia sicut subditus regi tenetur ad obedientiam, ita rex subdito tenetur ad protectionem*: *merito igitur ligeantia dicitur a ligando, quia continet in se duplex ligamen*"; adding, "ligeance is the mutual bond and obligation between the King and his subjects, whereby subjects are called his liege subjects, because they are bound to obey and serve him; and he is called their liege lord, because he should maintain and defend them. Therefore it is truly said that '*protectio trahit subjectionem, et subjectio protectionem*'" (b). As a further consequence of the rule, only those who are born in territory over which the King at the time of their birth is *de facto* monarch, that is, actually exercises sovereign power, are natural-born subjects; whereas persons born in places over which the King of England claims sovereignty, but

(a) *Calvin's Case*, 7 Rep. 6a.

(b) 7 Rep. 5a.

which are not *de facto* under his government, such as those born in Normandy or Saxony after these provinces had been lost to, but not abandoned, by the English Crown, or in France during the period when our kings were the titular sovereigns of that country, are aliens, and have always been so regarded by our law (c); for such persons own closer allegiance to another sovereign who is king *de facto* and from whom they can claim that protection which one who is merely king *de jure* is unable to afford. Again, a person, though not born in a place over which the King of England exercises direct sovereignty, if he is born in the dominions of a prince subject and doing homage to the King of England, is born within the King's allegiance, and therefore a natural-born subject and no alien; such, for example, was in former days the status of the Welsh, whose princes did homage to the King of England, until the time when their whole country was annexed in the reign of Edward I.; such also is at the present time the condition of the subjects of the feudatory princes of India, for "whosoever is born within the fee of the King of England, though it be in another kingdom, is a natural-born subject" (d).

The distinction of antenati and postnati.—It must always be remembered that allegiance is due to the King in his natural and not in his public or political capacity only; that is, it is due to the person of the King and not to his Crown or kingdom as distinct from his personality (e). In consequence, when the Crown descends to a prince exercising sovereign rights in territory which does not form part of the British Empire, those who are born in the foreign dominions after the Prince's accession to the throne of England,

(c) See *Calvin's Case*, 7 Rep. 18a, 20b; *Craw v. Ramsey* (1669), 1 Vaugh. 274; *Dyer*, 224 a, b.

(d) 7 Rep. 21b; Vaugh. 281.

(e) 7 Rep. 10a.

are natural-born British subjects; though those who are born before that time remain aliens "for he cannot be a subject born of one kingdom, that was born under the ligeance of a King of another kingdom, albeit afterwards one kingdom descend to the King of the other (*f*)."

This distinction made by the law between the "*antenati*" and "*postnati*," as these classes are severally denominated, is derived from the principle of English law which determines nationality by the time and place of birth. The same rules would no doubt apply in the case of any foreign dominions devolving by descent upon the King of England. But the distinction between *antenati* and *postnati* does not seem in any way applicable to the case of the inhabitants of territory acquired by the right of conquest or discovery, or formally ceded by a foreign power. In the case of the conquest of a Christian kingdom (and at the present time at any rate no legal distinction can be drawn between a Christian and a non-Christian country), COKE says in his report of *Calvin's Case*, "the King's subjects as well *antenati* as *postnati* are capable of lands in the kingdom or country conquered . . . and have the like privileges and benefits there as they have in England" (*g*), but he is silent as to the rights in England of those resident in the conquered territory. Lord BROUGHAM, in delivering judgment in the Privy Council in the case of *Mayor of Lyons v. East India Co.*, clearly lays down the law on this subject, saying: "The argument maintained by the Crown requires the proposition to be carried thus far, that upon a conquest or a cession, all the inhabitants continue aliens after the change of dominion, unless and until the conqueror or purchaser grants their naturalization. But this position seems wholly untenable; for all the authorities lay it down, that upon a conquest, the inhabitants, *antenati* as well as *postnati*, of the conquered country become denizens of the conquered country; and to maintain that the

(*f*) 7 Rep. 18a.

(*g*) 7 Rep. 18a.

conquered people become aliens to the new Sovereign upon his accession to the dominion over them, appears extremely absurd, almost as inconsistent with common sense as it would have been to hold the English inhabitants aliens under James I." (*h*). In the case of cession by treaty, it is usual to insert a clause in the treaty regulating the national status of the inhabitants of the ceded territory, and to allow them to retain their original nationality by removing from the ceded territory within a definite period; in such cases the Crown may be said to voluntarily abandon its right to their allegiance, for where there is no such provision in the treaty of cession, the inhabitants of ceded territory also become British subjects. The absence of the distinction between *antenati* and *postnati* in the case of territory acquired by conquest or cession would seem to rest upon the principle of law that a country conquered by British arms becomes a possession of the King in right of his Crown, and immediately forms part of his dominions and becomes subject to the jurisdiction of the British Parliament (*i*).

Enlargement of the category of British-born subjects
(a) *by the theory of extritoriality*.—It has already been pointed out that some few persons, though born within the realm, are yet accounted aliens. On the same principle, some persons, though born without the realm, are held to be natural-born subjects; for instance, the issue of the reigning monarch or his ambassadors or other personal representatives in a foreign country, or children born upon a warship or other public vessel, even although in a foreign port or on a British merchant vessel on the high seas, for all these are deemed to be born within the King's allegiance.

(*h*) *Mayor of Lyons v. East India Co.* (1836), 1 Moo. P. C., p. 175, at pp. 286, 287.

(*i*) See Lord STOWELL's judgment in *The Foltina* (1814), 1 Dods. at p. 451. See also the judgments of Lord MANSFIELD in *Mostyn v. Fabrigas* (1774), Cowp. 161, at p. 171, and *Campbell v. Hall* (1774), Cowp. p. 204, at p. 208.

(b) *By statutory enactments.*—There was apparently in the very earliest times a desire to extend the class of natural-born subjects beyond those who would be recognised as such by the strict application of the old feudal law. This disposition was engendered by the natural wish of every government to extend its jurisdiction, and also by the reluctance to disinherit the children of landowners, at a time when aliens could neither hold nor inherit real property, merely because by some accident they happened to be born without the realm. The matter was, however, felt to be full of difficulty, and in the seventeenth year of Edward III. (1343 A.D.), doubts having arisen as to the capacity to inherit even of the King's sons born in foreign parts, the Archbishop of Canterbury brought the question before the Lords, who replied unanimously that there was no doubt that the King's sons could inherit, wherever born, but that with regard to the children of other persons there were great difficulties in deciding the question. The matter was raised a second time in the presence of both the Lords and the Commons, who reaffirmed the decision already come to, and, further, were of opinion that the children of subjects also should be allowed to inherit, provided that they were born in the King's service, but inasmuch as the Parliament was about to be prorogued, and the matter was one requiring great care and deliberation, it was resolved to defer the promulgation of a statute on this subject until the next Parliament (*k*).

The visitation of the Plague prevented Parliament dealing with this and other subjects until the year 1350, when the statute "*de natis ultra mare*" (25 Edw. 3, c. 1) was passed. It declares "that the law of the Crown of England is and always hath been such, that the children of the Kings of England, in whatsoever parts they be born, in England or elsewhere, be able

and ought to bear the inheritance after the death of their ancestors," and then having declared several named persons to be capable of inheriting, it enacts "that all children inheritors, which from henceforth shall be borne without the ligeance of the King, *whose fathers and mothers* at the time of their birth be and shall be at the faith and ligeance of the King of England, shall have and enjoy the same benefits and advantages, to have and bear the inheritance within the same ligeance, as the other inheritors aforesaid in time to come; so always, that the mothers of such children do pass the sea by the licence and wills of their husbands." It has been well remarked (*l*) that the language of the statute is inconsistent with the view that it is merely declaratory of the common law, and, moreover, in that case the subsequent legislation on this subject would have been wholly unnecessary.

The British Nationality Acts.—The statute was confirmed and approved seventeen years later by the statute 42 Edw. 3, c. 10, and its provisions were further extended by s. 3 of the Foreign Protestants Naturalization Act of 1708 (7 Ann. c. 5), by which "the children of all natural-born subjects born out of ligeance of her Majesty her heirs and successors shall be deemed, adjudged, and taken to be natural-born subjects of this kingdom to all intents constructions and purposes whatsoever." This clause, on account of the vagueness of its wording, in its turn occasioned many doubts (*m*) and the British Nationality Act of

(*l*) By Sir A. COCKBURN, L.C.J., *Nationality*, p. 9.

(*m*) See the Report of the Select Committee on the Laws affecting Aliens, 1843, at p. ix: "The next general law on this subject is the 7th Anne, which naturalizes all the children of British subjects born out of the kingdom, without any of the conditions by which the operation of the ancient statute was restrained. Although, by a decision of the judges in the 16th year of Charles I., in the case of *Bacon v. Bacon* (Cro. Car.), and in *King v. Eaton*, it was determined that children born abroad of English fathers were English subjects, yet in the reign of Geo. 2

1730 (4 Geo. 2, c. 21), was passed with the express purpose of explaining it. It provides that "all children born out of the ligeance of the Crown of England or of Great Britain, or which shall hereafter be born out of such ligeance, whose fathers were or shall be natural-born subjects of the Crown of England or of Great Britain, at the time of the birth of such children respectively, shall and may, by virtue of the said recited clause . . . and of this present Act be adjudged and taken to be, and all such children are hereby declared to be natural-born subjects of the Crown of Great Britain to all intents, constructions, and purposes whatsoever." It should be added that it is expressly declared that the Act is to confer no benefit upon the children of fathers who have been attainted of high treason or who are liable to the penalties of high treason or felony in case of their returning into the realm without the royal licence, or who at the time of the birth are in the actual service of any foreign prince or state then in enmity with the Crown of England.

In 1772 this privilege of being deemed a natural-born subject was extended to those born abroad whose grandfathers on the *father's* side had been born within the realm by the British Nationality Act of 1772 (13 Geo. 3, c. 21), which enacts that "all persons born, or who hereafter shall be born, out of the ligeance of the Crown of England, or of Great Britain, whose fathers were or shall be" (by virtue of the Act of 1730) "inti-

it seems to have been thought doubtful whether by virtue of either of the above-named statutes the rights of native-born subjects were inherited by those children born abroad, one of whose parents only was a subject of England, and therefore recourse was had to Parliament."

R. v. Eaton (1626) is reported in Litt., p. 23, and *Bacon v. Bacon* (1641) in Cro. Car. 601. In the latter case both parents were English-born, but in the former the father only; the judges proceeding on the principle that, though the mother was an alien, she was *sub potestate viri* and *quasi* under the allegiance of the King. See also the remarks of Sir M. HALE, C.B., in *Collingwood v. Pace* (1656), 1 Vent. 413, at p. 422.

tled to all the rights and privileges of natural-born subjects . . . shall and may be adjudged and taken to be, and are hereby declared and enacted to be, natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever, as if he and they had been and were born in this kingdom " (n). The exceptions contained in the earlier Act excluding the children of persons attainted of treason, etc., were made to apply to this Act also, and it was further provided by s. 3 that the law relating to aliens should in no wise be altered in favour of a person naturalized by the Act unless he should come into the realm and take the oath of supremacy, allegiance and abjuration, and previously thereto receive the Sacrament of the Lord's Supper according to the usage of the Church of England, or in some Protestant or reformed congregation in Great Britain. This section became practically obsolete by reason of the provisions of the Acts of Emancipation of Roman Catholics and other Dissenters, but was not repealed till 1871 (o), and is referred to here as showing that it was the express wish of the legislature to confine the benefit of the new Act to those professing the Protestant religion.

It will be observed that the benefit of these Acts does not extend to persons born abroad whose mothers only were natural-born British subjects (p), nor to descendants more remote than grandchildren of persons born within the realm (q). The Naturalization Act of 1844, however, conferred upon the children of British mothers born abroad, the capacity of taking any real or personal estate by devise, purchase, inheritance or succession, but did not invest them with the rights or status of British subjects; the same Act further

(n) See *In re Willoughby* (1885), 30 Ch. D. 324.

(o) See the Promissory Oaths Act of that year (34 & 35 Vict. c. 48, s. 3).

(p) See *Doe d. Durore v. Jones* (1791), 4 T. R. 300.

(q) *De Geer v. Stone* (1882), 22 Ch. D. 243.

provided that any woman married to a natural-born subject or person naturalized should be deemed and taken to be herself naturalized and have all the rights and privileges of a natural-born subject (*r*) ; whereas, by the common law marriage had no effect upon the national status of a woman.

Naturalization of individual Aliens by Act of Parliament.—It will thus be seen that by the general law those only are British subjects who come under one of the three following classes, namely : those who (1) have been born within the realm ; (2) are the children or grandchildren on the father's side of persons born within the realm ; (3) are women married to British subjects ; and that all other persons are aliens. It is obvious that there must always have been cases in which it was thought desirable to clothe aliens resident here with the rights and liabilities of subjects. This object could, as has been seen (*s*), be in a great measure affected by the grant of letters of denization under the Great Seal. But the system of making denizens was found to be inadequate in two respects : (1) It was not retrospective in its operation ; (2) it did not confer all the rights of natural-born subjects, many political rights being excepted by the clause in the Act of Settlement and the additional taxes imposed upon aliens being payable under the statutes already mentioned. But, though the King by his prerogative could not grant the full rights of a natural-born subject, these could be acquired by obtaining from Parliament, which in intendment of law is assumed to be omnipotent, a special Act naturalizing an individual alien. An alien born in Portugal, who came into England with Beatrice, Countess of Arundel, was naturalized by Parliament in the third year of Henry VI., but private Acts of Parliament of this kind did not come into vogue until the

(*r*) 7 & 8 Vict. c. 66, ss. 3, 16.

(*s*) See p. 17.

beginning of the reign of Queen Elizabeth (*t*). Naturalization by private Act of Parliament differed from denization in that it had a retrospective effect, the naturalized person being deemed a subject "*naturé*" to all intents and purposes as if he had been born within the realm, so that his lands might be inherited by his son though born before the special Act of Parliament was passed, and he was, moreover, free from the liability to pay the alien duties and the other restrictions by which, as has been seen, an alien made a denizen was bound.

Early in the reign of James I., the Anglican party succeeded in placing on the Statute Book a general Act by which the benefit of obtaining these private Acts of Naturalization was confined to those professing the true Protestant religion. The Act (7 Jac. 1, c. 2) recites that: "Forasmuch as the naturalizing of strangers, and restoring to blood persons attainted, have been ever reputed matters of mere grace and favour, which are not fit to be bestowed upon any others than such as are of the religion now established in this realm"; and enacts that no person "of what quality, condition or place soever" shall be naturalized unless he have received the Sacrament of the Lord's Supper within one month next before any Bill exhibited for that purpose, and also take the oath of supremacy and the oath of allegiance in the Parliament House before his Bill be twice read. The necessity of taking the Sacrament as a condition precedent to obtaining naturalization was not dispensed with until 1826, when it was made no longer necessary by the statute 6 Geo. 4, c. 67, passed in that year (*u*); since which time persons of any

(*t*) Viner's Abridgment, tit. Alien (D) Naturalization, and Hansard on Aliens, p. 14.

(*u*) The famous Jew Bill of 1753 (26 Geo. 2. c. 26) had relieved Jews from this obligation; it was, however, so unpopular that it was repealed the following year by 27 Geo. 2. c. 1, without ever having been put into operation.

religious creed have been entitled to obtain naturalization, if they have been able to fulfil the conditions laid down by the law.

The third clause of the Act of Settlement (12 & 13 Will. 3, c. 2), to which allusion has already been made, rendered people naturalized by Act of Parliament no less than denizens, ineligible to be of the Privy Council or members of either House of Parliament or to enjoy any office or place of trust, whether civil or military, or to have any grant of lands from the Crown. In order to secure that this disability should not be evaded by inserting words for that purpose in private Acts of Parliament, it was provided by 1 Geo. 1, st. 2, c. 4, that no Bill of naturalization should be received in either House of Parliament, unless a clause embodying the words contained in s. 3 of the Act of Settlement were first inserted in the Bill. This last Act was repealed in effect by s. 2 of the Naturalization Act, 1844 (7 & 8 Vict. c. 86), and absolutely by the Statute Law Revision Act of 1867 (30 & 31 Vict. c. 59); but the clause of the Act of Settlement is still in force and applies in all cases, except when expressly repealed as it has been in the case of persons obtaining certificates of naturalization under the Naturalization Act, 1870 (33 & 34 Vict. c. 14), s. 7. The Royal Commissioners appointed in 1868 to report on the naturalization laws were of opinion that the usual words in a private Act of naturalization, granting "all the rights, privileges and capacities whatsoever" of a natural-born subject, have since 1844 been sufficient to include the political rights (x) of which the Act of Settlement has deprived naturalized aliens, and this view has generally been held to be correct; nevertheless, inasmuch as the point has never been decided in a court of law, it would be

(x) See the Report App., p. 8. Before 1844 the practice was to introduce a separate Act repealing 1 Geo. 1, st. 2, c. 4, in the particular case, and this was done on the naturalization of Prince Albert in 1840. See 3 & 4 Vict. cc. 1, 2.

advisable, *en majore cautela*, to insert in private Acts of naturalization appropriate words to obviate the difficulties which might arise on account of s. 3 of the Act of Settlement in cases where it is intended that full political rights should be given.

It having been found that aliens obtained Acts of naturalization for the purpose only of enjoying the privileges belonging to British subjects under treaties with foreign Powers without any intention of settling in Great Britain or becoming useful subjects thereof, an Act of Parliament was passed in the year 1774 (14 Geo. 3, c. 84) providing that no Bill of naturalization should be received in either House of Parliament unless it contained a clause declaring that the person so naturalized should not be entitled to claim in any foreign country any of the immunities or indulgences enjoyed by British subjects, by virtue of any treaty or otherwise, unless he should have resided in Great Britain or the dominions thereunto belonging for the space of seven years subsequent to the passing of the Act, without having been absent for a longer space than two months at any one time. This Act is no longer in force, having been repealed by the Naturalization Act, 1870 (33 & 34 Vict. c. 14, Schedule, Part I.).

Naturalization by Private Act of Parliament still allowed in certain exceptional cases.—The system of naturalization by certificate granted by the Secretary of State was first introduced by the Naturalization Act of 1844, and afterwards amended and improved by the later Act of 1870, and it was no doubt contemplated that special Acts of Parliament would no longer be resorted to for the purpose of naturalizing individual aliens. Indeed, even prior to this time the great expense necessitated by introducing and passing a Bill in Parliament, as well as the obstacles and delays it might encounter in its progress through the Legislature, and especially its liability to be lost, though

every other difficulty had been overcome, by reason of a prorogation or dissolution, had combined to deter the bulk of the aliens resident here from taking advantage of this mode of naturalization; so that even before 1844 the number of persons so naturalized did not average more than eight per annum (*y*), and between the years 1844 and the Report of the Royal Commission appointed in 1868 only eight such Acts were passed (*z*). The Act of 1870 increased the rights and privileges conferred by a certificate of naturalization by including the political rights which had been excepted by the Act of 1844, and could only be acquired by means of a private Act of Parliament; so that the reason for which in most cases private Acts had between 1844 and 1870 been applied for, no longer exists. Nevertheless, they are still available, and have been, or may be, made use of in two classes of cases: (1) Where a foreign prince is about to marry an English princess and afterwards reside in England, or where it is desired to confer a mark of distinction on a foreigner of eminence by granting him the rights of a British subject without placing him under the necessity of complying with the conditions laid down for obtaining a certificate of naturalization. (2) Where upon technical grounds, or owing to errors or omissions in the general Naturalization Acts, it is impossible for the applicant to obtain a certificate of naturalization or readmission to British nationality, *e.g.*, in the case of a person who has rendered important services to the Crown, but has not technically been in its service for a period of five years, such as, for instance, a person who has acted as interpreter or dragoman to a British Embassy or Consulate, or that of an Englishwoman who has married a foreigner and been divorced from him.

(*y*) Report of the Select Committee (1843), p. v.

(*z*) See the Appendix to the Report, p. 154.

It should, however, be added that these special Acts of Parliament, except where the applicant is a foreign prince, are by no means viewed with favour by the Government authorities, and in practice will only be granted where there are special circumstances, such as those above mentioned, which are considered to justify such a course.

Naturalization by General Statutes, now Repealed.—

In addition to the system of denization by letters patent and naturalization by private Act of Parliament, various public Acts of Parliament, all of which are now repealed, were passed during the seventeenth and eighteenth centuries granting naturalization and the full rights and privileges of British subjects to foreigners in return for advantages supposed to accrue to this country by reason of their carrying on certain branches of trade here or in the colonies or being engaged in the public service for a definite period. All the Acts dealing with this subject passed after 1714 imposed the political incapacity, contained in the 3rd clause of the Act of Settlement, upon those naturalized by them, and in most cases none but Protestants were entitled to any benefit from them.

Taking instances of this class of legislation, the Act for encouraging the manufactures of making linen cloth and tapestry, passed in 1663 (*a*), entitled all foreigners that shall really and *bonâ fide* set up and use in England any of the manufactures mentioned for the space of three years, upon taking the oaths of allegiance and supremacy to enjoy all the privileges of a natural-born subject. The Acts for the better supply of mariners and seamen gave similar privileges to foreigners who had served for two years or more upon a British ship of war, or merchant or other trading ship during time of war, and did not require

(*a*) 15 Car. 2, c. 15, repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125).

the taking of an oath or any other formality as a condition precedent to the acquisition of these rights (*b*).

The Foreign Protestants Naturalization Act, 1708 (7 Anne, c. 5), enabled all Protestants upon receiving the sacrament and taking the oaths to acquire all the advantages and privileges of natural-born subjects, but this enactment was found to attract so many undesirable aliens from foreign countries that, after a trial of three years, it was thought expedient to repeal it (*c*).

The Plantation Act, 1740 (13 Geo. 2, c. 7), enabled foreigners who had resided in any of the American colonies for seven years or more to be naturalized upon taking the oaths of allegiance, supremacy, and abjuration, and also receiving the sacrament; but special provisions were made in favour of Quakers and Jews so as to enable them to partake of the benefits of the Act. Moreover, though persons thus naturalized had their political rights limited in accordance with the provisions of the Act of Settlement, yet in their case the incapacity to hold any office or place of trust, or have any grant of lands from the Crown, applied only to offices or grants in Great Britain and Ireland, and not to the colonies or elsewhere (*d*).

Similarly the 2nd of Geo. 3, c. 25, naturalized foreign Protestants who had served two years in the Royal American Regiment or as Engineers in America, and the same privileges were conferred by various Acts upon foreign Protestants engaged in the whale fishery (*e*).

Naturalization by Certificate granted by a Secretary of State under Mr. Hutt's Naturalization Act, 1844.—All these general statutes conferring naturalization

(*b*) See 6 Anne, c. 64 (37 Ruff.), s. 20; 13 Geo. 2, c. 3; and 20 Geo. 3, c. 20.

(*c*) By 10 Anne, c. 9 (Ruff. c. 5).

(*d*) See 13 Geo. 2, c. 7, s. 6; 20 Geo. 2, c. 44, s. 5; and 13 Geo. 3, c. 25.

(*e*) See 22 Geo. 2, c. 45, s. 8; 26 Geo. 3, c. 50, s. 24; 28 Geo. 3, c. 20, ss. 15, 16; and 35 Geo. 3, c. 92, s. 36 *et seq.*

upon aliens who complied with the conditions laid down, have now been repealed, being considered no longer necessary since the introduction of the system of naturalization by means of a certificate granted by a Secretary of State. That system was initiated by Mr. Hutt's Naturalization Act of 1844 (7 & 8 Vict. c. 66). The Act, besides enacting that women married to natural-born subjects should be themselves naturalized, and enlarging and confirming the rights of aliens, authorised a Secretary of State to grant to any alien residing within the realm a certificate of naturalization. The certificate, once granted, conferred upon the alien all the rights and capacities of a natural-born subject, but did not entitle him to become a member of the Privy Council or either House of Parliament, or to any other rights that might be specially excepted in the certificate itself.

The Secretary of State, upon receipt of a memorial from an applicant for naturalization stating the circumstances in and grounds on which he sought to obtain the rights of a British subject, might at his discretion grant or refuse the certificate, which, when granted, conferred upon the alien all the rights mentioned therein provided that he took the oath of allegiance within sixty days. It is to be observed that the Act makes no provision as to the national status of the children of persons thus naturalized, and it accordingly remained unaltered.

At first the certificates of naturalization were so framed as to include all the rights of a subject, except that of being a member of the Privy Council or either House of Parliament, expressly excluded by the statute, but in the year 1850 it was found expedient to insert in the certificate a clause excepting "any rights and capacities of a natural-born British subject out of and beyond the dominions of the British Crown and the limits thereof" (f).

(f) See *In the goods of Galley* (1876), L. R. 1 P. D. 438.

This exception, in its turn, was found to be too wide, and a further exception was grafted upon it in 1854, by the addition of the words "other than such as may be conferred upon him by the grant of a passport from the Secretary of State to enable him to travel in foreign parts."

In 1858 a further restriction was placed on the issue of certificates of naturalization to ensure that the person naturalized should continue to be a *bonâ fide* resident in the United Kingdom by inserting in the form of the certificate a proviso that if the applicant should at any time be voluntarily absent from the United Kingdom for a period of six months, without the written licence of a Secretary of State, the certificate should be void, and all the rights and capacities thereby granted should absolutely cease and determine (*g*).

The Naturalization Act of 1870.—The state of the law as to naturalization, described in the preceding pages, was felt to be extremely complicated, and in several ways unsatisfactory. In 1868 a Royal Commission was appointed to deal with the whole subject. The following year it issued its report, which is a storehouse of learning upon most questions connected with the subject, and which bore fruit in the introduction and passage of the Naturalization Act, 1870 (33 & 34 Vict. c. 14). The provisions of the Act, which, with its three amending Acts (*h*) is still in force, fall under five principal heads, dealing with (1) the status of aliens and the extent of their rights (ss. 2, 5, and 14); (2) the acquisition of British nationality by certificate from a Secretary of State (ss. 7, 9, 11, etc.); (3) the loss and renunciation of British nationality (ss. 3, 4, 6, and 15, and see 35 & 36 Vict. c. 39); (4) the resumption of British nationality when lost or

(*g*) Report of Royal Commission of 1868, App., p. 9.

(*h*) 33 & 34 Vict. c. 102 (Naturalization Oath Act, 1870); 35 & 36 Vict. c. 39; and 58 & 59 Vict. c. 43.

renounced (s. 8) ; (5) the national status of infants and married women. In addition, the Act of 1870 repealed the Act of 1844 and all the other general Acts already enumerated, so far as they were still in force, conferring British nationality on aliens in return for services rendered to the country in promoting objects of supposed public interest. It is with the second of these heads alone that we are here concerned. By the new Act the power of granting to aliens certificates of naturalization, already vested in the Secretary of State by the Act of 1844, was continued, but the conditions under which these certificates were to be given, and their effect when given, were altered. The applicant for naturalization must produce such evidence as will satisfy the Secretary of State that he has within a limited time (now fixed by regulations issued by the Home Office in pursuance of powers conferred by the Act, as eight years) either resided in the United Kingdom or been in the service of the Crown for a period of not less than five years; and also that he intends, when naturalized, either to reside in the United Kingdom or to serve under the Crown. The Secretary of State may at his unfettered discretion, with or without assigning any reason, give or withhold a certificate as he thinks fit. From his decision there is no appeal, and the certificate when once given is irrevocable, even although it has been obtained without *bona fides*, or even fraudulently and upon false evidence. In order to prevent this, s. 2 of the Naturalization Oath Act, 1870 (33 & 34 Vict. c. 102), provides that any person wilfully and corruptly making or subscribing any declaration under the Naturalization Act shall be guilty of a misdemeanor, and liable to imprisonment for any term not exceeding twelve months. The certificate, however, is not to take effect until the alien, to whom it has been granted, has taken the oath of allegiance. From that time, by s. 7 of the Naturalization Act, 1870, he will "in the United Kingdom be entitled to

all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect."

This clause of the Act of 1870, the words of which have of necessity to be inserted in every certificate of naturalization, is by no means clearly drawn, but has not, as yet, received any authoritative judicial interpretation (*i*). The alien receives the rights of a British subject in the United Kingdom, and there are no words conferring any rights upon him when once beyond its borders, and it may therefore be said he has none of the rights of a British subject either in a foreign country or a British colony or dependency. If this the purely logical interpretation is correct, it is obvious that the insertion of the qualification was wholly unnecessary. On the other hand, it may be that the qualification was added to enable our Foreign Office to refuse the protection, which might otherwise be thought to be his right as a British subject, to a naturalized alien while in a foreign country, which by its own law had not renounced and still claimed his allegiance, and

(*i*) In *Re Burgoise* (1889), 41 Ch. D., p. 310, KAY, J., in his judgment, does not deal with the words "in the United Kingdom," though he says, in the course of the argument (p. 316), that the certificate to an alien "effects a naturalization so long only as he resides in this country," but he holds that the qualification operates to exclude a Frenchman naturalized under the Act from the rights of a British subject after he has returned to France and taken up his residence there. The judges of the Court of Appeal, however, declined to give any opinion either one way or the other upon this point, which, they said, was one of great difficulty, and decided the case upon other grounds. There is an instructive note upon this case by Prof. DICEY, K.C., in 5 L. Q. R., p. 438; and see the same periodical, Vol. 4, p. 226, and Vol. 6, p. 379, for different views on this subject.

that the words in "the United Kingdom" were inserted to prevent a naturalized alien exercising political rights in our self-governing colonies without having also obtained naturalization from the government of the colony under its statutes. Such may have been the intention of the draftsman of the Act, but he has failed to make it manifest by the words employed. In any case the view is widely held that a person naturalized under the Act is entitled to the rights of a British subject everywhere except in his own country, and even there if he has by its laws been freed from the allegiance formerly due to its government. There seems to be an almost general consensus of opinion that this should be the law, but it is at least doubtful whether the words of the Act can properly be made to bear such a construction.

The Act further authorises the Secretary of State to grant special certificates of naturalization to persons with respect to whose nationality as a British subject a doubt exists, and the grant of such a special certificate is not to be deemed to be an admission that the grantee was not previously a British subject, and also to persons who have been naturalized under any previous Act.

The Naturalization of Married Women and Infants.

—The Act of 1870 does not contemplate the granting of certificates to married women or infants under the age of twenty-one years, being persons under a disability by the common law. Section 10, however, deals with their case. By it a married woman is to be deemed to be a subject of the state of which her husband is for the time being a subject, so that a foreign woman marrying an Englishman is *ipso facto* naturalized (k).

see note
on p. 59

(k) This had been already effected by s. 16 of 7 & 8 Vict. c. 66, but the converse result, namely, that an Englishwoman marrying a foreigner should *ipso facto* become a foreigner and cease to be a British subject, was new.

Infants, on the other hand, change their nationality only when their parent, namely, the father, if alive, or the mother, if the father be dead, changes his or her nationality, and the infant is resident with the father or mother if the father be dead, in the country of which the latter has become a subject after the time that his or her change of nationality has been completed. In these circumstances, but not otherwise, the nationality of the child is to be deemed to be that of the parent.

Naturalization in the Colonies.—It had been expressly declared by Parliament (see statute 10 & 11 Vict. c. 83) that the Naturalization Act, 1844, did not apply to the British colonies or other possessions abroad (nor does the Act of 1870 apply to any of these places), but s. 16 expressly validates “all laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges of naturalization, to be enjoyed by such person within the limits of such possession,” subject to the usual confirmation or allowance by the Crown. A list of some sixty ordinances passed by the different colonies for this purpose, most of which are in force there, is to be found in the Appendix to the Report, issued in 1901, of the inter-departmental Committee on the Naturalization Acts. Aliens who have taken advantage of these ordinances—which generally follow the provisions of the Act of 1870, though the benefits conferred by them are in many cases confined to persons of European parentage or descent—are not strictly naturalized persons, for they have acquired the rights and liabilities of British subjects only in the colony, which has granted them a sort of local naturalization, and their legal status elsewhere is not strictly or accurately defined.

Loss of British Nationality: (a) *by Loss of Territory*; (b) *by Act of Parliament.*—Such are the means

by which British nationality may be acquired; the provisions relating to its loss, though less numerous, are scarcely less complicated. It is often said that by the common law allegiance was indelible, and that a person once having acquired the rights of an Englishman, whether by birth or otherwise, could never in any circumstances be freed from the duties and liabilities which those rights implied. The truth, however, seems to be that a subject could never by his own acts (l) sever the bond of allegiance to the English Crown when once formed, the maxim, "*nemo potest exuere patriam*" being strictly enforced by the common law (m); but that by reason of the loss of territory by the King of England the bond of allegiance binding those born within the lost territory might be broken. Territory may be lost in several ways. For instance, if a king of England has foreign dominions which are not part and parcel of the United Kingdom or the British empire—as the present reigning house at one time possessed Hanover, and the succession to the Crown of those dominions is regulated by different

(l) "Natural allegiance is therefore a debt of gratitude which cannot be forfeited, cancelled or altered by any change of time, place or circumstance, nor by anything but the united concurrence of the legislature. An Englishman who removes to France or to China owes the same allegiance to the King of England there as at home, and twenty years hence as well as now. For it is a principle of universal law that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former: for this natural allegiance was intrinsic and primitive and antecedent to the other; and cannot be divested without the concurrent aid of that prince to whom it was first due. Indeed, the natural-born subject of one prince, to whom he owes allegiance, may be entangled by subjecting himself absolutely to another; but it is his own act that brings him into these straits and difficulties, of owing service to two masters; and it is unreasonable that, by such voluntary act of his own, he should be able at pleasure to unloose those bonds by which he is connected to his natural prince" (Blackstone, Vol. 1, pp. 369, 370).

(m) See *R. v. Aeneas Mardonald* (1747), 18 How. St. Tr. 858, and *Foster's C. C.* 59; and *Fitch v. Weber* (1847), 6 Hare, 51.

principles to that of the Crown of England—the time may, and probably in the ordinary course of events, will, come when the crowns of the two kingdoms will descend upon two different princes. In such a case, as we have seen, those born in the foreign dominions after the union of the Crowns are by birth natural-born subjects, but on the severance of the crowns they *ipso facto* become aliens, even although they may have taken up their permanent residence in England and desire to remain its subjects. This is the obvious result of the maxim that allegiance is due to the King's person. A person born in Hanover before 1837 was as much a natural-born subject as a person born in England, but he owed allegiance not to the English throne but to King William and his heirs, as determined by the law of Hanover and not that of England, so that on King William's death his allegiance was due to the Duke of Cumberland, and he ceased to have the rights of a British subject which the allegiance due to the British king had formerly conferred upon him (n).

Territory may also be lost by conquest or cession to a foreign country, or by its being declared independent

(n) *In re Stepney Election Petition, Isaacson v. Durant* (1886), 17 Q. B. D. 54. COKE, however, in his report on *Calvin's Case*, took a different view: "So albeit the kingdoms (which Almighty God of His infinite goodness and mercy divert) should by descent be divided, and governed by several kings; yet it was resolved that all those that were born under one natural obedience while the realms were united under one sovereign, should remain natural-born subjects and no aliens; for that naturalization due and vested by birthright cannot by any separation of the crowns afterward be taken away: nor he that was by judgment of law a natural subject at the time of his birth become an alien by such a matter *ex post facto*. And in that case upon such an accident our *postnatus* may be *ad fidem utriusque regis*, as BRACTON saith" (7 Rep. 27 b). For comment on this, see 17 Q. B. D., p. 65. The double nationality that would arise if such a person were *ad fidem utriusque regis* would be also in direct contradiction to the principle laid down by Blackstone in the passage quoted in the note to p. 51.

of the British Crown. In such circumstances the rule of law would seem to be that where territory is conquered or declared to be independent, and no treaty or Act of Parliament is made, those who have become natural-born subjects by being born there before the conquest or state of independence under a new government has become an accomplished fact, remain British subjects unless and until a treaty or Act of Parliament is made abandoning or revoking their allegiance; but those who are born after the conquest or the establishment of the new independent government are aliens born, for they were not born within the allegiance of the King of England, who would have merely a *de jure* sovereignty over their birthplace. Where, however, territory is relinquished by being ceded by treaty or recognised as independent by a treaty or other formal act of state, then the national status of those previously born within it will be regulated by the terms of the treaty, those born afterwards being, of course, aliens. In such treaties it is usual to provide (*o*) that those remaining in the ceded or relinquished territory beyond a certain limited time shall become aliens, but that those leaving it within the specified limit of time shall remain British subjects, and such they will continue even although they subsequently return to the ceded territory (*p*). It is usual to have treaties

(*o*) But there need not be a provision to this effect in express words; it will be enough if our Government relinquishes all claims to jurisdiction in the ceded territory, as was done in the treaty of peace with the newly acknowledged United States of America. "A relinquishment of the government of a territory is a relinquishment of authority over the inhabitants of that territory" (*per* ABBOTT, C.J., in *Doe d. Thomas v. Acklam* (1824), 2 St. Tr. (N.S.), at p. 121); but where no time limit is laid down, the time for determining the nationality of the inhabitants will be the date of the treaty, and all the inhabitants of the ceded territory residing there at that date become aliens.

(*p*) See *Doe d. Auchmuty v. Mulcaster* (1825), 2 St. Tr. (N.S.) 245; also 5 B. & C. 771, and 8 D. & R. 593; and contrast with it the case of *Doe d. Thomas v. Acklam* (1824), 2 St. Tr. (N.S.) 105, 2 B. & C. 779, and 4 D. & R. 394.

of this kind confirmed by Act of Parliament, and although it is conceded that the Crown may make treaties of peace, whether territory is ceded thereby or not, on its own authority alone, it is held doubtful whether at the present time the royal prerogative is still wide enough to make a treaty ceding part of the dominions of the Crown to a foreign power other than a treaty of peace which terminates a war. Even in that case it is a widely accepted view that the Crown cannot transfer the allegiance of its subjects without their consent, even by a treaty of peace, though it may thereby cede a portion of its territory, so that it is necessary in cases where this is done to ratify the treaty by Act of Parliament, to which the consent of all subjects is supposed to be given through their accredited representatives in the Houses of Parliament (*q*). When Heligoland was added to the German empire in the year 1890, as the result not of a war but of an international agreement, the provisions of the treaty ceding the sovereignty of the island, as well as those regulating the future nationality of the inhabitants, were expressly assented to by Act of Parliament, viz., the Anglo-German Agreement Act, 1890 (*r*); and when the Independence of the North American Colonies was acknowledged, the treaty of peace was previously authorised by statute (22 Geo. 3, c. 46).

There has never been any doubt that natural-born subjects may be made aliens by Act of Parliament although unconnected with any treaty of peace or cession of territory; but until the Naturalization Act, 1870, there is but one instance of such a statute having been enacted. That instance is the Act to prevent the seduction of native artificers into foreign parts (5 Geo. 1, c. 27), which, among other things, provided

(*q*) See Forsyth's Cases and Opinions on Constitutional Law, pp. 183—186 and pp. 336—340.

(*r*) 53 & 54 Vict. c. 32.

that any native artificer or manufacturer of and in wool, iron, steel, brass and other metals, who should thenceforth go into any foreign country there to use, exercise or teach foreigners his trade or manufacture, or should remain in a foreign country with a like purpose for a period of six months after being warned by the British ambassador or other minister to return, should suffer the incapacities and forfeitures mentioned, and in addition should "be and be deemed and taken to be an alien and out of his Majesty's protection." The Act was repealed by 5 Geo. 4, c. 97, and no similar statute has since been enacted (s).

In these, but in no other ways, could the bond of allegiance be destroyed. "It is," as Blackstone says, "a tie which cannot be severed or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature. An Englishman who removes to France or to China owes the same allegiance to the King of England there as at home, and twenty years hence as well as now; for it is a principle of universal law that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former; for this natural allegiance was intrinsic and primitive and antecedent to the other, and cannot be divested without the concurrent aid of that prince to whom it was first due. Indeed the natural-born subject of one prince, to whom he owes allegiance, may be entangled by subjecting himself absolutely to another, but it is his own act that brings him into these straits, and difficulties of owing service to two masters; and it is unreasonable that by

(s) The statute 14 & 15 Hen. 8, c. 4, provided that all persons born in England who should become sworn subjects to foreign princes should pay the same duties as aliens, but did not make them aliens, and expressly provided that if they should return into the realm and inhabit there, they should be treated like other Englishmen.

such voluntary act of his own he should be able at pleasure to unloose those bonds by which he is connected to his natural prince" (t).

Under the Naturalization Act of 1870. — The Naturalization Act of 1870 introduced three new methods by which a British subject might free himself from his allegiance, whether natural or acquired, after birth. The legal theory embodied in the maxim, "*Nemo potest exuere patriam*" was not abandoned, but the Sovereign and the legislature voluntarily relinquished the right to hold a subject to his allegiance in certain cases provided that all the conditions and formalities laid down were strictly complied with. The object of the legislature seems to have been to get rid of the inconvenience which must necessarily arise where one and the same person has a double nationality, as, for instance, where a person is held to be a British subject by English law, and at the same time treated by some foreign law as the subject of a foreign state. The Act of 1870 dealt with some, but not all, of these cases of double nationality by enumerating three ways in which British nationality was to be lost.

(1) By s. 6 any British subject who, when in any foreign state, and not being under any disability, voluntarily (u) becomes naturalized in such state, shall be deemed to have ceased to be a British subject, and be regarded as an alien. The effect of this section is discussed in the case of *In re Trufort, Trafford v. Blanc* (1887), 36 Ch. D. 600. Special provision was made for the case of British subjects naturalized in a foreign country before the passing of the Act. Such persons were allowed, if they so desired, to make a declaration

(t) Blackstone, Vol. 1, pp. 369, 370.

(u) The expression "voluntarily" is somewhat vague. See the note by Sir Dennis Fitzpatrick appended to the Report of the Naturalization Laws Committee of 1901 (Rep., p. 19, and para. 45).

of British nationality, after making which they were to be deemed to continue to be British subjects except when within the limits of the foreign state in which they had been naturalized, and of which they were still subjects. It should be observed that this provision applies only to persons naturalized abroad prior to 1870, so that any person, unless under a disability as defined in s. 17, voluntarily naturalized in a foreign country after that date, *ipso facto*, becomes an alien, but is not thereby discharged from any liability he may be under in respect of any acts done before he became an alien (*x*). It should be added that it has been recently held that the section does not enable a British subject to become naturalized in a state at war with Great Britain. Before the Act an attempt to obtain such naturalization was obviously illegal and an act of treason, and the Act merely declares the consequences of naturalization in a foreign state, but does not legalise it where formerly unlawful (*y*).

(2) By s. 10, an English woman becomes a foreigner by marrying an alien, for she is deemed to be a subject of the state of which her husband is for the time being a subject.

There is also a provision that the infant child of a British father or mother (being a widow) naturalized in a foreign country should lose its British nationality, but only in case two further conditions are fulfilled, namely, (a) that the child has, after the naturalization of his parent abroad, become resident (the length of residence being left quite indefinite) in the country in which the father or mother (if a widow) has been naturalized; and (b) that the child has itself become a subject of that country according to its laws.

(3) *Declaration of Alienage*.—By making a declaration or formal statement before a competent authority

(*x*) See s. 15 of the Act.

(*y*) See *R. v. Lynch*, [1903] 1 K. B. 444.

renouncing his British nationality, a British subject, if of full age and under no disability, may become an alien.

By ss. 3, 4, of the Act such declarations may be made by three classes of persons only, namely :

- (a) Persons naturalized as British subjects, but only where a convention exists between Great Britain and the country of their origin to the effect that its subjects or citizens who have been naturalized as British subjects may divest themselves of their status as such subjects. The only country with which such a convention has been made is the United States of America (z), with whom a supplementary convention was made in 1871, the terms of which may be found in the Schedule to the Naturalization Act, 1872 (35 & 36 Vict. c. 39).
- (b) Persons born in the British dominions and therefore natural-born subjects, but who by reason of their foreign parentage or otherwise under the law of some foreign state were at their birth and still remain subjects or citizens of such state.

(z) The main object of this, the third section of the Act, was to facilitate the making of conventions with foreign countries, by virtue of which the subjects or citizens of such country, when naturalized here, should in their own country be deemed to have lost their nationality of origin in the same way as a British subject naturalized abroad is by s. 6 to be regarded as an alien. The creation of a very large class of cases of double nationality, namely, persons naturalized as British subjects and still retaining their nationality of origin, would be thus avoided. Accordingly an easy method of reacquiring their nationality of origin is provided by s. 3. The operation of the section has, however, been restricted on account of the inability of our Government to make the contemplated conventions with other countries, the authorities of which, not unnaturally, put forward the indefiniteness of the rights conferred by a British certificate of naturalization, already referred to (see pp. 48—49), as a reason for refusing to deprive their subjects of the protection afforded by retaining their original nationality.

- (c) Persons born out of the British dominions of a father being a British subject.

Here again the wording of the Act is unfortunate, but the intention is undoubtedly to confirm the right of making declarations of alienage to persons born abroad who become at their birth British subjects by virtue of the British Nationality Acts, 1730 and 1772, or the other kindred statutes already mentioned.

Statutory Aliens.—A natural-born British subject who has lost his British nationality and become an alien by any of these three methods is termed, by s. 8 of the Act, a statutory alien (a).

Readmission to British Nationality. — The same section makes provision for the resumption by statutory aliens of British nationality by enabling them to apply for a certificate of readmission to British nationality. The conditions that must be fulfilled before such a certificate will be granted are precisely the same as those imposed upon ordinary aliens applying for certificates

(a) If s. 8 stood alone, an Englishwoman married to a foreigner would be a statutory alien, as being a natural-born British subject who had become an alien in pursuance of the Act, for by s. 10 (1) she is to be deemed to be a subject of the state of which her husband is a subject. But while the marriage lasted she would be unable to obtain a certificate of readmission to British nationality on account of her being under a disability, namely, coverture. However, sub-s. (2) of s. 10 seems to cut down the definition of statutory alien so as to exclude married women other than widows. It enacts that "a widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of readmission to British nationality in manner provided by this Act." This sub-section has no application to a marriage dissolved in any other way than by death; and it seems that the case of an Englishwoman who has married a foreigner and been divorced from him is unprovided for; if she desires to resume her British nationality, it will be necessary to apply for a private Act of Parliament for that purpose. See Von Roemer's *Resumption of British Nationality Act, 1894*.

of naturalization, with this difference, namely, that the governor of any British possession (and by s. 17 this term includes any person exercising the chief authority in such possession), as well as the Secretary of State in the United Kingdom, may grant a certificate of readmission to British nationality to a statutory alien resident in the possession under his jurisdiction, and residence in such possession shall be deemed equivalent to residence in the United Kingdom. Moreover, a certificate of readmission to British nationality is somewhat differently worded to, and may be held to give somewhat wider rights than, a certificate of naturalization. A statutory alien who has obtained such a certificate shall, from the date thereof, "but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of a foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect." It will thus be seen that in consequence of the clearer wording of the section much of the ambiguity that is thought to attach to the status of a person who has obtained a certificate of naturalization has no existence in the case of a statutory alien readmitted to British nationality.

It should, however, be remarked that the term statutory alien does not apply to persons who have become British subjects by denization or naturalization, and have subsequently lost their British nationality, for they are not natural-born subjects; if, therefore, such persons desire to resume their British nationality, they must apply for a certificate of naturalization as ordinary aliens.

The passage of an amending Act allowing certificates of naturalization to be granted in the same form as certificates of readmission to British nationality, and

extending to ordinary aliens seeking naturalization the modifications in the conditions precedent made in favour of statutory aliens applying for certificates of readmission—concessions which might well be granted—would greatly simplify the law and remove doubts and ambiguities which have arisen or may arise through the loose drafting of the Act.

CHAPTER II.

WHO IS AN ALIEN BORN ?

Definition of an Alien at Common Law.—An alien is, at common law, a subject of a foreign state who has not been born within the allegiance of the King of England (a).

The time for determining a given person's nationality and deciding whether he is a subject or an alien is the time of his birth, and the general effect of this rule is, that persons born within the dominions of the King, whether of English or of foreign parents, are natural-born subjects, and that persons born without his dominions are aliens. For born within the allegiance, though it in theory means born under the rule and protection of a particular King, is practically almost equivalent to born within his territory. To this general result there are, however, even at common law certain exceptions which arise from the fact that dominions or territory and allegiance are not interchangeable terms. Thus, there are persons who, though born within the realm, are yet aliens, and others who, though born without it, are natural-born subjects; for the former class must be taken to be born without and the latter class to be born within the ligeance of the King.

Instances of Persons born within the Realm or other dominions of the King who are aliens born are (a) the children of a foreign sovereign or reigning prince or of his or any foreign state's duly accredited ambassador (b)

(a) *R. v. Burke and Others* (1868), 11 Cox C. C. 138.

(b) Cockburn, *Nationality*, p. 7. The words "other diplomatic agent" are added, but the point has never been the subject of judicial decision, and would possibly only cover a minister representing the personality of his sovereign or state.

or other diplomatic agent, for their parents, though resident within his dominions, owe no obedience to the King, and are by the comity of nations, which is accepted and recognised by the municipal law, looked upon as being extra-territorial; (b) the children of foreigners born in British territory which is, at the time of their birth, in the occupation of a foreign army (c). With these exceptions, all persons born on land within the British Empire, though of foreign parentage, are natural-born subjects and no aliens.

Instances of Persons born without the Dominions of the King who are Natural-born Subjects at Common Law.—(a) The children of the King, though born abroad (d). (b) The children of the King's ambassadors or other ministers accredited to a foreign state as representing his person (e), but this will not include the children of other officers or persons in the military service of the Crown born abroad in foreign parts (f).

(c) *Calvin's Case*, 7 Rep. 18a.

(d) See 25 Edw. 3, st. 1.

(e) 7 Rep. 18a. There is a *dictum* of HOLT, C.J., indicating that the principle extends to the children of servants of an ambassador. See Anon. Comberbach, p. 212. The older authorities lay it down that in order to make the issue of an ambassador, if born abroad, English, the mother must be an Englishwoman. See Jenkin's 1st Century Cases 2, and the passage cited from *Calvin's Case*, 7 Rep. 18a; but this is not now necessary.

(f) *De Geer v. Stone* (1882), 22 Ch. D. 243. In *Craw v. Ramsay* (1669), VAUGHAN, C.J., is reported to have said: "If the King of England enter with his army hostilely the territories of another prince, and any be born within the places possessed by the King's army, and consequently within his protection, such person is a subject born to the King of England, if from parents subject and not hostile" (Vaugh., p. 281). But either the place must have become *de facto* for the time being a portion of the King's dominions or the children will be subjects only by virtue of the statute 25 Edw. 3, *de natis ultra mare*, or some later statute; so that in 1698 it was found necessary to pass an Act of Parliament to naturalize the children of such officers and soldiers, and others the natural-born subjects of this realm, who have been born abroad during the war, the parents of such children having been in the service of this government (9 (Ruff. 9 & 10) Will. 3, c. 20). The Act imposed upon all persons seeking to benefit from it the

(c) Persons born in a place situated within the territory of a prince who is subject to and is bound to do homage to the King of England in respect of such territory, for it is then within the fee of the King of England, and consequently within his power, protection, and allegiance (*g*). Thus a person born within the dominions of the feudatory princes of India is a natural-born subject; but one born in Hanover after the accession of Queen Victoria would be an alien born, for though the King of Hanover might be for some purposes a subject of the Queen of England (*h*), yet he did not hold his kingdom of Hanover of the Queen of England as his feudal superior. Moreover, persons born in the dominions of a prince, or a state which may by treaty, usage, sufferance, or otherwise be under the protection of the English Crown, but have never by any formal act of cession, conquest, or occupation become portions of the British Empire, such as the natives of Egypt or the South African Republic while under the suzerainty of the British Crown before its annexation in 1900, are not natural-born subjects, but aliens born. (d) Persons born in a foreign state, the sovereignty of which devolves upon the King of England by inheritance or otherwise, even although the foreign territory is never incorporated in the British Empire, provided that such persons are born after the union of the two Crowns under one sovereign (*i*). These persons, though born on foreign soil, are yet born within the King's dominions.

The national status of children born on board ship is regulated by similar principles; those born upon a

necessity of taking the sacrament within five years of their becoming fourteen years of age.

(*g*) 7 Rep. 21b; Vaugh. 281.

(*h*) *Duke of Brunswick v. King of Hanover* (1844), 6 Beav. 1, and (1848) 2 H. L. C. 1.

(*i*) *Calvin's Case* (1608), 7 Rep. 1.

ship of war or other public vessel (*k*), to which the doctrine of ex-territoriality applies, are the subjects of the prince or state to which such vessel belongs, for a public vessel is looked upon as a portion of state territory, even although it may be in a foreign port or foreign territorial waters. But with regard to children born upon a private or merchant ship, some doubts may arise. Those born upon such ships while on the high seas will undoubtedly be regarded as born within the country to which the ship belongs (*l*), but there is no case deciding what is the nationality, according to our law, of children born on ships in territorial waters. This absence of direct authority, at least in the case of children born on board ship to British fathers, may be accounted for by the application of the British Nationality Acts of 1730 and 1772, hereafter mentioned. Taking the cases on criminal jurisdiction over British and foreign ships as a guide, it would appear that persons born on board a British private vessel—even although such vessel was at the time of birth within the territorial waters of a foreign country—are natural-born British subjects unless such vessel was at the time in a non-tidal river or above bridges in a tidal river; nor does it make any difference that the ship is in harbour or moored to a landing stage, for such vessels have been held to be within the jurisdiction of the Admiralty of England, and therefore those born on board of them are born within the ligeance of the King (*m*). But if a British ship is in a foreign river beyond the ebb and flow of the tide, or in a tidal river above bridges, then children born on board of it are not natural-born British subjects at common law, though they may have the rights of British subjects under the

(*k*) See the *Parlement Belge* (1880), 5 P. D. 197; and compare also *Young v. ss. Scotia*, [1903] A. C. 501.

(*l*) See *Marshall v. Murgatroyd* (1870), L. R. 6 Q. B. 31.

(*m*) See *The Queen v. Carr and Wilson* (1882), 10 Q. B. D. 76; and *The Queen v. Anderson* (1868), L. R. 1 C. C. R. 161.

British Nationality Acts, if their fathers or grandfathers on the father's side were and still remained natural-born British subjects. On the other hand, children born on board a foreign merchant ship are aliens, even although the ship is at the time of their birth in British territorial waters, unless the ship is also in waters which are included within the body of a county, in which case the children, it seems, must be held to be born on British territory and so natural-born subjects (*n*).

As has been said, this subject is not free from doubt. The Inter-Departmental Committee in the Report issued in 1901 dealt with it as follows: "The principal questions which have been raised are: (1) Whether a person born on board a British merchant vessel in a port of a foreign state, or in other foreign waters, is a British subject? (2) Whether a person born on board a foreign ship in British territorial waters, or within the body of a county, is a British subject? We think it important that the law in this respect should be declared, and we consider that the simplest rule would be that a person born on board a British ship in foreign waters should be a British subject, but that a person born on board a foreign ship should not be deemed to be a British subject merely because the ship was at the time of his birth in British waters" (*o*).

Persons Born Abroad who are by Statute Natural-born British Subjects.—Some persons born out of the dominions of the King, though aliens by the common law, have been made natural-born subjects by statute. These persons differ from those already mentioned, who, though born out of the King's dominions, are natural-born subjects by the common law in that the

(*n*) See the *Queen v. Keyn*. (1876), L. R. 2 Ex. D. 63, and also the preamble to the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73).

(*o*) See paragraph 12 of the Report.

latter, though born without the dominions, are yet born within the allegiance of the King. The history of the statutes referred to has already been given (*p*), so that it is only necessary to state their effect here.

By the Foreign Protestants' Naturalization Act, 1708 (7 Anne, c. 5), s. 53, as explained by the British Nationality Act, 1730 (4 Geo. 2, c. 21), all children born out of the ligeance of the Crown of England or of Great Britain, whose fathers were or shall be natural subjects of the Crown of England or of Great Britain at the time of the birth of such children, "shall be adjudged and taken to be . . . and are declared to be natural-born subjects of the Crown of Great Britain to all intents, constructions and purposes whatsoever." The explanatory Act contains several exceptions; but the only one of any practical importance at the present time is that the child of a father who, at the time of his child's birth, was or shall be in the actual service of any foreign prince or state then at enmity with the Crown of England or Great Britain, is to "remain in the same state plight and condition" as he would have been if the statutes had never been made; that is to say, he is an alien and not a natural-born subject.

By the British Nationality Act, 1772 (13 Geo. 3, c. 21), persons born abroad whose fathers are under the last-recited Acts entitled to the rights and privileges of natural-born subjects, are themselves declared to be natural-born subjects of the Crown of Great Britain to all intents, constructions, and purposes whatsoever, but the exceptions and limitations contained in the British Nationality Act, 1730, are also to be read into this Act (*q*).

(*p*) See Historical Survey, p. 35—38.

(*q*) See *Drummond's Case* (1834), 2 Knapp, P. C. 295, and *Fitch v. Weber* (1847), 6 Hare, p. 51. N.B.—If the provisions of s. 6 of the Naturalization Act, 1870, by which a British subject loses his British nationality by naturalization in a foreign state, had been in force at the material times, the plaintiffs in the latter case would not have been natural-born subjects.

The result of these statutes is, that a person, though born abroad, whose father or grandfather on the father's side was born within the British dominions, is a natural-born British subject, unless at the time of his birth his father has ceased (otherwise than by death) to have the rights of a British subject (*r*), or, though still retaining such rights, is in the actual service of a foreign state at enmity with Great Britain (*s*).

But the status of a British subject is not conferred upon persons born abroad whose fathers are British subjects by naturalization or denization, but not by birth, or whose mothers only are natural-born British subjects (*t*) ; nor to agnate descendants beyond the third degree of persons born within the realm (*u*). Nor have the Acts any application to illegitimate children, who, in the eye of the law, have no father (*x*).

It must, however, be remembered that persons, though aliens born, may acquire the rights of British subjects and cease to be aliens, and that natural-born subjects may become aliens by divers methods provided by the law. These methods will be dealt with in subsequent chapters (*y*).

(*r*) *Doe d. Thomas v. Acklam* (1824), 2 B. & C. 779.

(*s*) See *Count Wall's Case* (1834), 3 Knapp, P. C. 13, in which it was held that the son of a British father, who had entered into the service of France and taken the oath of a knight of the Order of St. Louis, is entitled to the character of a British subject, although he himself was born in France of a French mother, and had served in the French army. England and France were not at war at the time of the birth, which took place in 1768.

(*t*) *Doe d. Duroure v. Jones* (1791), 4 T. R. 300.

(*u*) The preamble to the Act of 1772 expressly states that no provision has been made to extend further than to children whose fathers were natural-born subjects ; so that this and the earlier Acts are not to be read as giving British nationality to the agnate descendants of a natural-born British subject *ad infinitum*. See also *De Geer v. Stone* (1882), 22 Ch. D. 243.

(*x*) See *Sheddon v. Patrick* (1854), 1 Macq. H. L. 535.

(*y*) Under the Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 23), ss. 2, 9, a person domiciled in the United Kingdom may obtain a declaration of his right to be deemed a natural-born subject.

CHAPTER III.

CLASSIFICATION OF ALIENS ; ALIEN FRIENDS AND
ALIEN ENEMIES.

FOR the purposes of classification when considering their legal status, aliens may be divided into alien friends and alien enemies. An alien friend is one whose sovereign or state is at peace with the Crown of England ; an alien enemy is one whose sovereign or state is at war with the Crown of England.

The Legal Status of an Alien Friend : Political Disabilities.—As we have seen in the first chapter, aliens were in former days subject to many incapacities and restrictions to their rights, which have now been removed, so that so far as regards civil rights their status is hardly distinguishable from that of a natural-born subject. But their political rights are very limited, they are, by the Act of Settlement (a), declared incapable to be of the Privy Council or members of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands or hereditaments from the Crown to themselves, or to any other or others in trust for them. Any office of trust, however humble, is covered by the wording of the Act, and cannot be held by an alien, even although the office may be a burden rather than a privilege ; thus it has been decided that a foreigner is incapable of holding the office of parish constable, being a civil office of trust, and he therefore cannot be made liable for the penalty for refusing to serve (b). But the disability relates only to

(a) 12 & 13 Will. 3, c. 2, s. 3 (most of these incapacities existed also at common law).

(b) *R. v. de Mierre* (1771), 5 Burr. 2788. The defendant had been naturalized by private Act of Parliament, but the Act incorporated the clause of the Act of Settlement above recited.

an office, and does not extend to any other civil employment. No doubt aliens are at the present time precluded from becoming members of the Bar or of the Stock Exchange, but this is not on account of any legal disability, but because the governing bodies which have the right of regulating the admissions to those professions refuse to admit aliens to practise them.

Moreover, an alien, although otherwise qualified, is at common law incapacitated from exercising the parliamentary franchise, and in 1698 it was resolved by the House of Commons, *nemine contradicente*, "that no alien, not being a denizen or naturalized, hath any right to vote in elections of members to serve in parliament" (c). He is also debarred from the municipal franchise and from voting at any county council or parish council election or parish meeting, not only by the common law but also by statute, for s. 9 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), provides that a person otherwise qualified is not entitled to be enrolled as a burgess if he is an alien, and by s. 2 of the County Electors Act, 1888 (51 & 52 Vict. c. 10), the county is placed on exactly the same basis as the borough franchise, and by s. 2 (1) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), the parish meeting is to consist only of persons registered either in the local government (*i.e.*, the burgess roll or county register (d)) or the parliamentary register of electors (e).

Service upon Juries.—Since 1870, aliens, if domiciled in the country for ten years, have been entitled, and are liable, to act as jurors in cases where British subjects are concerned, for the Juries Act of that year (33 & 34 Vict. c. 77, s. 8), enacts that "Aliens having been domiciled in England or Wales for ten years or upwards, if in other respects duly qualified, shall be qualified and shall be liable to serve on juries or

(c) 12 Com. Jour. 367.

(d) See 52 & 53 Vict. c. 63, s. 17 (3).

(e) See also s. 44.

inquests in England and Wales as if they had been natural-born subjects of the Queen; but, save as aforesaid, no man not being a natural-born subject of the Queen shall be qualified to serve on juries or inquests in any court or on any occasion whatsoever." Before 1870, aliens had been disqualified to serve on juries or inquests except juries *de medietate linguæ* and might be challenged "*propter defectum patriæ*" (*f*). Juries *de medietate linguæ* were juries impanelled for the trial of an alien for any felony or misdemeanour (*g*), and were constituted of equal numbers of British and alien jurors. Any alien indicted or impeached of any such crime was entitled, on demanding it, to be tried by a jury so composed (*h*), but this right was taken away by s. 5 of the Naturalization Act of 1870, which made an alien triable in the same manner as if he were a natural-born subject.

An Alien's right to hold Real and Personal Property.

—Section 2 of the same Act conferred upon aliens the right to hold real property of every description, though their capacity in this respect had in former times, as has been seen in the first chapter, been very limited; but it was expressly provided that the section should not have any retrospective operation (*i*) nor apply to real property situate out of the United Kingdom, and should not qualify an alien for the franchise or any office or entitle him to any right or privilege as

(*f*) Co. Lit. 156b; and see the Juries Act, 1826, 6 Geo. 4, c. 50, ss. 3, 27; *R. v. Sutton* (1828), 8 B. & C. 417.

(*g*) The statute, 1 & 2 Phil. & Mary, c. 10 (1554), had taken away an alien's right to a jury *de medietate linguæ* on a trial for treason.

(*h*) Juries Act, 1825 (6 Geo. 4, c. 50), s. 47. In earlier times it was the rule to impanel juries *de medietate linguæ* in civil cases also in which one of the parties was an alien and juries composed of aliens only where both parties were aliens. See the Statute of the Staple, 27 Edw. 3, st. 2; 28 Edw. 3, c. 13, and 8 Hen. 6, c. 29.

(*i*) See *Sharp v. St. Sauveur* (1871), L. R. 7 Ch. App. 343, 351.

a British subject other than rights in respect of property. The section also confirmed the right of holding personal property already possessed by aliens, and in order to show the extent of an alien's capacity to hold property, it may be useful to set it out verbatim :

“Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject ; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject : Provided,—

- “ (1) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise :
- “ (2) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him (*k*) :
- “ (3) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act.”

(*k*) So that the will of an alien will not be validated by the provisions of Lord Kingsdown's Act (24 & 25 Vict. c. 114), which confers the privilege of making a will in certain ways, not theretofore recognised as legal, upon British subjects. See *Bloxam v. Favre* (1884), 9 P. D. 130.

An Alien incapable of owning a British Ship.—The Act itself, however, contains one important limitation to the otherwise unqualified capacity of an alien to hold property of all kinds, for s. 14 provides that—

“Nothing in this Act contained shall qualify an alien to be the owner of a British ship.”

thus continuing and perpetuating an incapacity which had been created by the old navigation Acts and preserved by the modern merchant shipping Acts. But though an alien cannot directly become the owner of any British ship or any of the sixty-four shares into which it may be divided, he can indirectly obtain an interest in and control over British ships by becoming a shareholder in a company (*l*), for even at common law an alien may be a member of an English corporation, registered as the owner of one or more British ships. Those who are qualified to be owners of British ships are by the Merchant Shipping Act, 1894, divided into the following four classes:

- (a) Natural-born British subjects ;
- (b) Persons naturalized in pursuance of an Act of Parliament of the United Kingdom or an Act or ordinance of the proper legislative authority in a British possession ;
- (c) Persons made denizens by letters of denization ;
- (d) Bodies corporate established under and subject to the laws of some part of her Majesty's dominions and having their principal place of business in these dominions (*m*) ;

and it has been held that a company, falling under the fourth class, is entitled to have its ships registered as

(*l*) See Co. Lit. 129b : “An abbot, prior or prioress alien shall have actions reall, personal or mixt. for anything concerning the possession or goods of his monastery here in England, though he be an alien borne out of the King's ligeance : because he bringeth it not in his owne right but in the right of his monastery, and not in his naturall but in his politique capacity.”

(*m*) 57 & 58 Vict. c. 60, s. 1.

British, and if registration is refused to enforce its right by *mandamus*, even although some of its members are foreigners resident abroad (*n*) ; nor would there be any difference in law, if all the shareholders were aliens (*o*).

Moreover, an alien may become a mortgagee of a British ship in his own name, for there would seem to be nothing in the Merchant Shipping Acts or any other Act to confine the right of becoming registered as a mortgagee or transferee of a mortgage of a British ship to a British subject (*p*).

The right of the executive government to exclude alien friends from landing in the United Kingdom, and to expel them when once landed, will be dealt with in a subsequent chapter upon the Aliens Act of 1905 (*q*)

The status of alien enemy, i.e., the subject or citizen of a state at war with the Crown of England, is very different; for it is said that alien enemies have no rights or privileges whatsoever except by the King's special favour (*r*). For where war breaks out between two nations, it puts an end to all peaceful intercourse

(*n*) *R. v. Arnaud* (1846), 9 Q. B. 806.

(*o*) See Lord MACNAGHTEN'S opinion in *Janson v. Driefontein Consolidated Mines, Limited*, [1902] A. C., at p. 497.

(*p*) See 57 & 58 Vict. c. 60, s. 31 ; and Abbott on Merchant Shipping, p. 86 (14th ed.).

(*q*) The question how far aliens *not within the jurisdiction* can avail themselves of rights created by statute and not existing at common law has not yet been finally decided. In the case of *Adam v. The British and Foreign Steamship Co., Limited*, [1898] 2 Q. B. 430, DARLING, J., held that the benefit given by the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), commonly known as Lord Campbell's Act, did not extend to the case of aliens not resident in this country on the ground that Acts of Parliament do not apply to aliens, at least if they be not even temporarily resident in this country, unless the language of the statute expressly refer to them ; but this case was dissented from by the divisional court in the later decision of *Davidson v. Hill*, [1901] 2 K. B. 606. See Maxwell on the Interpretation of Statutes, p. 227 *et seq.*

(*r*) " Thus in the first place, it hath been said, that any body may seize to his own use such goods as belong to any alien enemy. For such enemies, not being looked upon as members of our society, are not entitled during their state of enmity, to the benefit or protection of the laws ; and therefore every man, that

between the subjects or citizens of the belligerent states. International law knows no such thing as war between two states or governments and peace between their respective subjects. "War," as Mr. Hall says (s), "logically implies the cessation of existing intercourse and therefore a right on the part of a state to expel or otherwise treat as enemies the subjects of an enemy state formed within its territory; the suspension or extinction of existing contracts according to their nature, among extinguished contracts being partnerships, since it is impossible for partners to take up their joint business on the conclusion of war at precisely the point where it was abandoned at its commencement; a disability on the part of the subjects of a belligerent to sue or be sued in the courts of the other, or to be naturalized in the state with which their country is at war (t), and finally a prohibition of fresh trading or other intercourse and of every species of private contract."

In early times our courts were prepared to enforce the law of nations in all its rigour, and to refuse protection either of person or property to an alien enemy. "If," say the judges of the Court of King's Bench in *Sylvester's Case*, decided in the first year of Queen Anne's reign, "an alien enemy come into England without the Queen's protection, he shall be seized and imprisoned by the law of England, and he shall have no advantage of the law of England, nor for any wrong done to him here" (u). Yet even in the earliest times an alien enemy might receive some protection from the criminal law, and those only might be allowed by the Crown, whose duty and interest it was to prevent

has opportunity, is permitted to seize upon their chattels, without being compelled, as in other cases, to make restitution or satisfaction to the owner" (Bla. Com., Vol. 2, p. 401). See also Vin. Abr. Alien (1) 8.

(s) International Law, p. 390.

(t) *R. v. Lynch*, [1903] 1 K. B. 441.

(u) 7 Mod. 150.

a breach of the peace, to restrain his person or confiscate his property, who had been duly authorised by the public authority of the state residing in the Crown and its ministers. But our Government has long ago ceased to enforce the ancient law in all its rigour, and since the commencement of the Seven Years' War in 1756, it has been the custom of our Government to allow the subjects of a state with which we may be at war, who are within the realm at the commencement of hostilities, to reside there, so long as they demean themselves dutifully (*v*), and such persons are in effect alien friends and entitled to be treated as such (*x*). To again quote Mr. Hall: "Where persons are allowed to remain, either for a specified time after the commencement of war, or during good behaviour, they are exonerated from the disabilities of enemies for such time as they in fact stay, and they are placed in the same position as other foreigners, except that they cannot carry on a direct trade in their own or other enemy vessels with the enemy country" (*y*).

However, even at the present time the status of alien enemies is inferior to that of alien friends, in three principal respects: (1) An alien enemy may be prevented from entering the realm, or when here may be summarily expelled by a duly authorised person without any reference to the provisions of the Aliens Act, and even if he is here under a licence, that licence may be terminated by the executive government. (2) An alien enemy is unable to sue upon any cause of action, even although it has arisen before the commencement of hostilities; but in this case his right of action is not destroyed—it is merely suspended during the continuance of the war. (3) An alien enemy cannot make a valid contract with a British subject, and should he attempt to make any such agreement, it cannot be enforced at law, either during the war, or after the war

(*v*) See Twiss' *Law of Nations*, Vol. 2, pp. 86—100.

(*x*) *Wells v. Williams* (1696), 1 Salk. 46.

(*y*) *International Law*, p. 395.

has come to end and a definite treaty of peace has been concluded.

The Contracts of Alien Enemies.—The outbreak of war is in itself sufficient to debar the subject of one of the belligerent states from enforcing any rights he may have against a subject of the other, and also renders void any contract that may subsequently be made between such persons. So that where before the commencement of hostilities the contract has been fully executed, and the cause of action is already complete, it cannot be enforced before the conclusion of peace. "It is a principle of law," says Lord STOWELL, "that, during a state of war, there is a total inability to sanction any contract by an appeal to the tribunals of the one country, on the part of the subjects of the other. In the law of almost every country, the character of an alien enemy carries with it a disability to sue or to sustain, in the language of the civilians, *a persona standi in judicio*. The peculiar law of our own country applies this principle with great vigour. The same principle is received in our courts of the law of nations; they are so far British courts that no man can sue therein, who is a subject of the enemy, unless under particular circumstances that, *pro hac vice*, discharge him from the character of an enemy, such as his coming under a flag of truce, a cartel, a pass or some other act of public authority, that puts him in the King's peace, *pro hac vice*, but otherwise he is totally *exlex*" (z). But the right of action revives on the conclusion of peace; for it is suspended only and not extinguished by the commencement of hostilities, and may be put in suit as soon as the war is over (a). For the plea of alien enemy in such a case was a plea in abatement and not

(z) *The Hoop* (1799), 1 C. Rob. 196, at p. 200; and see *The Troija* (1854), 1 E. & A. 342.

(a) *Janson v. Driefontein Consolidated Mines, Limited*, [1902] A. C. 484.

in bar (b) ; so that at the present time, if made out, it would be a ground for an application to stay proceedings, but not for the dismissal of an action.

Alleged right of the Crown to Enforce the Contract of an Alien Enemy.—It is sometimes said that the Crown may for its own benefit enforce the contractual rights of alien enemies which have been vested in them before the commencement of the war ; for it is argued that the King may seize and appropriate to his own use the choses in action of alien enemies in the same way as he may seize their property if he choose to exercise the strict rights which the law gives him. In the year 1699, in the case of *Att.-Gen. v. Weeden and Shales*, the Court of Exchequer is reported, after long debate, to have resolved that choses in action, which belong to our alien enemy, are forfeitable to the Crown, but this can be treated as *obiter dictum*, for in the case in question the forfeiture was not enforced (c). Accordingly, Lord ELLENBOROUGH may be justified in saying in his judgment in the case of *Wolff v. Oxholm*: “Sir MATTHEW HALE also in his Pleas of the Crown, Vol. I., p. 95, says ‘that by the law of England debts and goods found in this realm belonging to alien enemies belong to the King, and may be seized by him’ ; but the books referred to do not furnish an instance of the seizure of debts or a decided case in support of the legality of such a seizure,” and, also, in holding that the payment by a Danish subject, to the Danish Government, in accordance with an ordinance made during the war, of a debt due to an English subject before the war commenced, was no answer to an action brought upon the same debt in the English courts after the conclusion of peace, because the ordinance and the payment under it were contrary to the principles of the law of nations as recognised and enforced by our courts (d). Yet, some

(b) *Harmer v. Kingston* (1811), 3 Camp. 153 ; *Flindt v. Waters* (1812), 15 East, 260.

(c) *Att.-Gen. v. Weeden and Shales* (1699), Park., p. 267.

(d) *Wolff v. Oxholm* (1817), 6 M. & S. 92, at p. 102 *et seq.*

forty years afterwards POLLOCK, C.B., was inclined to adopt Sir MATTHEW HALE's theory, for he says in answer to an argument addressed to the court, that it would be a hardship to force a married woman, suing on a contract made before coverture, to join her husband as plaintiff, when he was an alien enemy and therefore debarred from suing, "in reality it is no hardship, for all the rights of an alien enemy are forfeited to the Crown, and the proper course of proceeding is for the Crown to entitle itself to those rights by having an inquisition, and then, after enforcing this right of action against the defendant, to deal justly, by giving the wife the benefit of it, taking care that the husband gets nothing which he could employ adversely to the State" (e). But here, in the case of *Att.-Gen. v. Weeden and Shales*, upon which the doctrine was professedly founded, the theory was not necessary to the decision actually arrived at and the approval of it may be treated as *obiter dictum*. The absence of any satisfactory evidence that this alleged right of the Crown has ever been put in force, and of any authority for its existence better than those already quoted is some justification for holding that it is not now and perhaps never was a part of the common law of England (f).

(e) *De Wahl v. Braune* (1856), 1 H. & N. 178, 181. This case was, of course, decided before the Married Women's Property Acts and before the Naturalization Act of 1870. Lord ELLENBOROUGH himself, if his judgment in *Flindt v. Waters* (1812), 15 East, 260, is perused, appears to take the view that the Crown might interfere and seize the debt of an alien enemy, but this was five years before his judgment in *Wolff v. Oxholm*, where he goes into the question thoroughly and arrives at the opposite conclusion.

(f) "With respect to the argument insisted upon by way of answer to the public inconvenience likely to arise from permitting such contracts to be enforced, viz., that all contracts made with an enemy were to the benefit of the King during the war, and that he may enforce payment of any debt due to an alien enemy from any of his subjects, we think it is not entitled to much weight. Such a course of proceeding never has been adopted; nor is it very probable that it ever will be adopted, as well from the difficulties attending it as the disinclination to put in force such a prerogative" (*per* Lord ALVANLEY, C.J., in delivering the considered judgment of the Court of Common Pleas in *Furtado v. Rogers* (1802), 3 B. & P. 191, at p. 200).

The Performance of an Executory Contract made with an alien who becomes an Enemy excused.—On the other hand where a contract made with an alien enemy is still executory, its performance immediately upon the commencement of hostility becomes impossible in the eye of the law for all dealing with an enemy, whether by way of trade or otherwise, is prohibited, and consequently the contract is avoided and any further performance of it is excused (g).

“The force of a declaration of war is equal to that of an Act of Parliament prohibiting intercourse with the enemy, except by the Queen’s licence. As an Act of State, done by virtue of the prerogative exclusively belonging to the Crown, such a declaration carries with it all the force of law. It is founded upon the *jus belli* which Lord COKE (Co. Lit. 11b) states to be a portion of the law of England, adding *in republica maxime conservanda sunt jura belli*” (h). It is not now usual to issue a formal declaration of war, but the first act of hostility which the Crown may either direct or resist if directed by a foreign state is treated as, in all respects, equivalent to a declaration of war, and will accordingly render illegal during the continuance of the war the performance of any contract made with those who, thereupon, become alien enemies. “Under such circumstances, in all ordinary cases, the more convenient course for both parties seems to be that both should be at once absolved, so that each, on becoming aware of the fact of a war, the end of which cannot be foreseen, making the voyage or the shipment presumably illegal for an indefinite period, may at once be at liberty to engage in another adventure without waiting for the bare possibility of the war coming to an end in sufficient time to allow of the contract being

(g) *Potts v. Bell* (1800), 8 T. R. 548; and *Esposito v. Bowden* (1857), 7 E. & B. 763.

(h) WILLES, J., in *Esposito v. Bowden* (1857), 7 E. & B. 781.

fulfilled, or some other opportunity of lawfully performing the contract perchance arising (*i*).

“The law upon this subject was doubtless made, according to the well-known rule, to meet cases of ordinary occurrence, and in times when to permit trading with the enemy, even through neutrals was the exception, not the rule. These considerations may explain the origin of the rule authoritatively laid down in the books as to war at once working an absolute dissolution (*k*).”

A Contract made with an Alien, who is an Enemy at the time, Void ab initio.—It follows from the principle already stated that a contract made with an alien enemy after war has been actually commenced is void, *ab initio*, and cannot be enforced even after the conclusion of peace (*l*). A plea that the plaintiff is an alien enemy when pleaded in an action upon such a contract was a plea in bar, not merely in abatement, and at the present time would be a good defence to an action entitling a defendant, making it good, not merely to a stay of proceedings but to final judgment in the action.

When an Alien Friend becomes an Enemy.—It may, therefore, be of great importance to decide at what precise moment an alien friend becomes an alien enemy, and according to the note in Mr. Hargrave’s edition of Coke upon Littleton (*m*), “it shall be tried by the record, if he be in amity or not, viz., a proclamation of war.” It has already been pointed out that formal proclamations of war are not now made by this country to other states before proceeding to

(*i*) As, for instance, a licence allowing trade with the enemy, or a General Order in Council permitting such trade.

(*k*) *Per* WILLES, J., in *Esposito v. Bowden* (1857), 7 E. & B., at p. 792.

(*l*) *Willison v. Patteson* (1817), 7 Taun. 439.

(*m*) 129b, note 2.

belligerent acts, the last occasion upon which a formal declaration of war was issued being the war with Spain in 1762; so the matter must now be determined by the time when a manifesto or other notification that a state of war exists is issued by the Government to its subjects or where this is not done by the time when the first act of hostility actually takes place (*n*).

Licences to Trade in Time of War.—The Crown may, however, grant licences to alien enemies to trade with British subjects and to British subjects to trade with alien enemies, and may further, by Order in Council, give general permission for certain kinds of trade to be carried on with alien enemies (*o*). Trade carried on under such special licences or general permission is made legal, and contracts made in the course of such trade are enforceable like other contracts. “By the law and constitution of this country, the Sovereign alone has the power of declaring war and peace. He alone, therefore, who has the power of entirely removing the state of war, has the power of removing it in part, by permitting, where he sees proper, that commercial intercourse which is a partial suspension of the war. There may be occasions when such intercourse is highly expedient. But it is not for individuals to determine on the expediency of such occasions on their own notions of commerce, and possibly on grounds of private advantage, not very reconcilable with the interests of the state. It is for the state alone, on more enlarged views of policy, and on consideration of all circumstances that may be connected with such an intercourse, to determine when it shall be permitted and under what regulations. In my opinion, no principle ought to be held more sacred than that this intercourse cannot

(*n*) See *Driefontein Consolidated Gold Mines v. Janson*, [1900] 2 Q. B. 339; [1901] 2 K. B. 419; and [1902] A. C. 484. And on the subject of the commencement of war, see Hall's *International Law*, p. 377 *et seq.*

(*o*) See *Clementson v. Blessig* (1855), 11 Exch. 135.

subsist on any other footing than that of the direct permission of the state" (*p*).

A licence to trade is to be liberally construed and by implication will legalise and make valid a contract of insurance upon any trade permitted by it (*q*). But if the licence be conditional it become operative only when the condition is fulfilled, and when operative it enables the alien enemy to sustain any legal proceedings in respect of any transactions which it authorises.

The subject of licences to trade in time of war is, however, not now so important as it was in former times, because upon the outbreak of hostilities with an important commercial state the Crown may, and probably will, waive to a great extent its strict rights as a belligerent, and issue an Order in Council, as was done at the beginning of the Crimean War, permitting certain kinds of trade with the enemy. Such a general permission will be construed and be operative in the same way as a licence to an individual (*r*).

Licences to Alien Enemies to reside within the Realm.

—Moreover a licence, whether special or general, to an alien enemy to reside within the realm imports a licence also to trade with all persons except those resident in the enemy state, and confers upon the alien enemy, so long as he remains here, the rights and status of an alien friend. That this is so appears from the case of *Wells v. Williams*, decided as early as 1697. In that case, being an action upon a bond brought by an executor, the defendant pleaded that the plaintiff was an alien

(*p*) *Per* Lord STOWELL in *The Hoop* (1799), 1 C. Rob. 199.

(*q*) *Flindt v. Scott* (1814), 5 Taun. 674. "These licences to trade, however they may have been formerly construed strictly, are now in all courts construed more liberally and favourably to trade, in order to effectuate the benefits intended to result from them" (*per* THOMSON, C.B., *ibid.*, p. 697). See also *Kensington v. Inglis* (1807), 8 East, 273.

(*r*) See *The Neptune* (1855), Spinks, 281; and English Prize Cases, Vol. 2, p. 520.

enemy, and that he came into England *sine salvo conductu*. To this it was replied that the plaintiff was here *per licentiam et sub protectione domini regis*, and the court resolved that if the plaintiff came here before the war was proclaimed the action was maintainable because there was no need of a safe conduct in time of peace, and that, even though he came here since the war, yet, if he continued here by the King's leave and protection, without molesting the government or being molested by it, he may be allowed to sue, for that is consequent on his being in protection. And TREBY, C.J., said "that wars at this day are not so implacable as heretofore, and therefore an alien enemy, who is here in protection, may sue his bond or contract, but an alien enemy abiding in his own country cannot sue here" (s). Inasmuch as at the present time our Government as a rule allows all alien enemies who happen to be resident here when war breaks out to remain, and does not interfere with those who come afterwards if they behave peacefully, the disability in respect of making contracts and bringing actions which attaches to alien enemies is in practice confined to such as remain without the jurisdiction of the English Crown. There is, however, some authority for saying that an alien enemy though residing here will not be entitled by reason of the general licence to those who demean themselves peaceably to the rights of an alien friend unless he can show that his presence here, after the commencement of the war, was known to the Government, and that he has not been interfered with. See *Boulton v. Dobree* (1808), 2 Camp. 102, and *Alciator v. Smith* (1812), 3 Camp. 244. Both of these were judgments of non-suit, which would not necessarily be followed at the present time.

But though our courts at the present time might be more liberal than in former days in implying the exist-

(s) *Wells v. Williams* (1697), *Ld. Raym.*, p. 282; and *Salk.* 46. A prisoner of war set free upon parole, being also under the protection of the King, may, it appears, likewise sue. See *Maria v. Hall* (1807), 1 *Taun.* 33 n.

ence of a licence, the ancient law that where there is no such licence the property of an enemy may be seized and appropriated to the use of the Crown is still in full force. In giving judgment in one of the cases arising at the time of the Crimean War, Dr. Lushington said: "With regard to an enemy's property coming to any part of the kingdom, or being found there, being seizable, I confess I am astonished that a doubt could exist on the subject. I apprehend the law has been this, that it is competent for any person to take possession of such property, unless it had any protection by licence, or by some declaration emanating from the authority of the Crown, and to assist the Crown to proceed against it to adjudication. There are many instances in which a capture has been made in port by non-commissioned captors, and the usual form has been for the proceedings to be conducted under the authority of the Proctor for the Admiralty, and condemnation has passed to her Majesty in her office of Admiralty. If the property was on land, according to the ancient law, it was also seizable; and certainly during the American war there were not wanting instances in which such property was seized and condemned by law, not by the authority of this court but by another. That rigour was afterwards relaxed. I believe no such instance has occurred from the time of the American war to the present day, no instance in which property on land was subject to search or seizure, but no doubt it would be competent to the authority of the Crown if it thought fit" (t).

Residence of a British Subject or Alien Friend in the territory of an Alien Enemy.—On the other hand a British subject, or the subject of a neutral state, voluntarily residing in the enemy's territory is considered as adhering to the enemy, and is therefore placed under the same disabilities as an alien enemy, and is incapable

(t) *The Johanna Emilie*, otherwise *Emilia* (1854), Spinks, 14; and 2 Eng. Prize Cas. p. 254.

of suing during the continuance of the war. "It is well known that if an alien enemy be residing here under the King's protection he may sue; but if an Englishman be resident in an hostile country the King cannot enable him to sue. The reason of the disability of the person residing in an enemy's country is, that the fruits of the action may not be remitted to an hostile country, and so furnish resources against this country. For that purpose the case of an Englishman residing abroad does not differ from that of any other person" (*u*). But the mere presence of a British subject in the dominions of an alien enemy will not be sufficient to deprive him during the whole of the war of his rights as such; for he will not be reduced to the status of an alien enemy if he can show that he has done nothing which can fairly be interpreted as an adherence to the King's enemies, such as carrying on business in the hostile country, or otherwise subjecting himself to the hostile government during more than a mere temporary visit (*x*).

It must also be observed that though a British subject, if he permanently resides in a hostile country will be subject to the same disabilities as an alien enemy, yet he is not thereby freed from any of the liabilities imposed upon him by his British nationality (*y*) unless he has, by voluntary naturalization in a foreign country before the commencement of the war (*z*), ceased to be a British subject under the terms of the Naturalization Act of 1870.

The Law as to Trading with the Enemy not altered by the Naturalization Act, 1870.—It is said in the last edi-

(*u*) *Per* RORKE, J., in *McConnell v. Hector* (1802), 3 B. & P. 113.

(*x*) See *Roberts v. Hardy* (1815), 3 M. & S. 533.

(*y*) See the case of *Æneas Macdonald* (1747), 18 St. Tr. 858.

(*z*) *R. v. Lynch*, [1903] 1 K. B. 444.

tion of Chitty upon Contracts that the last-mentioned Act has introduced a considerable modification of the law upon this subject. As we have seen, the second section empowers an alien to take, acquire, hold and dispose of real and personal property of every description in the same manner as a British subject; and it is said that "as the statute appears to give this power to all aliens, whether they be subjects of a friendly state or not, and whether they reside in this country or not; and the power so given cannot be enjoyed without entering into contracts for the taking, acquiring and disposing of real and personal property; it seems to follow that all aliens are now enabled to enter into such contracts, and may now enforce by action in our courts any obligation arising therefrom" (a).

No reasoning could be more fallacious, for it is a principle of the common law, which the Act does not purport to alter, that all intercourse between British subjects and alien enemies is illegal unless it takes place under a licence from the Crown. The section must be taken to empower aliens to acquire, hold and dispose of property by lawful means, but not by means that are illegal and contrary to the old established principles of the common law (b).

Trading with alien enemies is still illegal, and although exceptions from the strict rule of law have

(a) Chitty upon Contracts (14th ed.), p. 162.

(b) The learned editor of Chitty seems to have been misled by the omission in s. 2 of the Act of 1870 of the words "being the subject of a friendly state," which occur in the similar section of Hutt's Naturalization Act (7 & 8 Vict. c. 66, s. 4); but these words in the earlier Act were merely declaratory of the common law, and would have been read into the section, when interpreted by the courts, if not expressly inserted. In the few cases arising during the late war in South Africa this point was not even raised; although, if sound, it would have disposed of the whole matter. See, for example, *Driefontein Consolidated Gold Mines v. Janson*, [1900] 2 Q. B. 339; [1901] 2 K. B. 419; [1902] A. C. 484.

on occasion been made, no branch of such trade, unless it is allowed by the executive government under a licence either express or implied in one of the ways already mentioned, is lawful. In order to make this quite plain, during the early part of the recent war in South Africa the following notice was issued from the British Foreign Office :

“ Foreign Office, December 22, 1899.

“ Information which has come to the knowledge of the Secretary of State for Foreign Affairs shows that it is not generally known that trading with the enemy is unlawful.

“ British subjects may not in any way aid, abet, or assist the South African Republic or the Orange Free State in the prosecution of hostilities, nor carry on any trade with, nor supply any goods, wares or merchandize to either of those Republics, or to any person resident therein, nor supply any goods, wares, or merchandise to any person for transmission to either Republic, or to any person resident there, nor carry any goods, wares or merchandise destined for either of the Republics, or for any person resident therein.

“ The above applies to all foreigners while in British territory.

“ All persons, whether British subjects or foreigners, who, in contravention of the law, commit any of the aforesaid acts will be liable to such penalty as the law provides ” (c).

The law provides that no such acts can possibly give rise to a cause of action in the English courts, and that any property used in such trade may be seized by the authorized agents of the British Government, and confiscated to its use, and further that the commission of such acts by any one owing allegiance, even though only temporarily, to the British Crown is a high crime

and misdemeanour (*d*), and may possibly amount to high treason, if the culprit can be proved to be “adherent to the King’s enemies in his realm, giving to them aid and comfort in the realm or elsewhere” (*e*).

All Aliens, whether Friends or Enemies, under the protection of the Laws are bound to obey them.—Having dealt with the differences between the civil status of alien friends and alien enemies, it remains to add that both alike, so long as they are allowed to remain in the British dominions under the protection of our laws, are bound to respect and obey the law of the land, and are liable to the penalties of the criminal law in case of any breach thereof. “An alien whose sovereign is in amity with the Crown of England,” says Sir M. Foster (*f*), “residing here and receiving the protection of the law oweth a local allegiance to the Crown during the time of his residence. And if during that time he committeth an offence, which, in the case of a natural-born subject, would amount to treason, he may be dealt with as a traitor. For his person and personal estate are as much under the protection of the law as the natural-born subject’s; and if he is injured in either he hath the same remedy at law for such injury.

“An alien whose sovereign is at enmity with us, living here under the King’s protection, committing offences amounting to treason, may likewise be dealt with as a traitor. For he oweth a temporary local allegiance founded on that share of protection he receiveth.”

But if an alien enemy comes and remains here as a member of a hostile force, then he is not here under the King’s protection, and is not punishable in the ordinary way for an offence against the laws. “But it seemeth

(*d*) Hawkin’s Pleas of the Crown, Vol. 1, c. 22.

(*e*) Statute of Treason, 25 Edw. 3, st. 5, c. 2.

(*f*) Discourse on High Treason, p. 185, ss. 2, 3. See also the following sections.

that aliens, who in a hostile manner invade the kingdom, whether their king were at war or peace with ours, and whether they come by themselves or in company with English traitors, cannot be punished as traitors, but shall be dealt with by martial law (*g*). If an alien who has come here in these circumstances is made a prisoner of war, he is to the extent that he is placed within the protection of our Government, liable to the ordinary criminal law" (*h*).

(*g*) Hawkin's Pleas of the Crown, Vol. 1, c. 17, s. 6.

(*h*) For this subject, see Stephen's History of the Criminal Law, Vol. 2, pp. 4—9.

CHAPTER IV.

HOW AN ALIEN MAY BECOME A BRITISH SUBJECT.

AN alien born may become a British subject in six different ways, viz. :

- (1) By receiving letters of denization.
- (2) By annexation or cession to the British Empire of the place in which he is domiciled.
- (3) By obtaining a certificate of naturalization from the Secretary of State.
- (4) In the case of women by marriage to a British subject.
- (5) In the case of an infant by residence during infancy with his or her father (or mother being a widow) who has obtained a certificate of naturalization or of readmission to British nationality.
- (6) By private Act of Parliament.

The advantage to an Alien of becoming a British subject, in addition to freedom from the restrictions imposed by the Aliens Act of 1905, are in substance three, namely :

- (1) The right to own a British ship.
- (2) Participation in political rights.
- (3) The rights and privileges of a British subject when in a foreign country.

With regard to the first of these, there is a proviso in the Merchant Shipping Act of 1894 that a person naturalized or made a denizen shall not be qualified to be an owner of a British Ship unless he has taken the oath of allegiance to his Majesty the King, and is, during the time he is owner of the ship, either resident in his Majesty's dominions or partner in a firm actually

carrying on business in his Majesty's dominions (a). Of all the six modes of acquiring British nationality above-mentioned with the exception of (2), (4), and (5), the taking of the oath of allegiance is necessary as a condition precedent; in the case therefore of the inhabitant of annexed territory or of a married woman, or an infant naturalized under s. 10 of the Act of 1870, desiring to become an owner of a British ship, it would seem—though the question has not come up for legal decision—necessary for the intending owner to take the oath of allegiance.

The Political Rights of Aliens who have become British subjects are greatly affected by the third clause of the Act of Settlement to which reference has been made in the first chapter. It runs as follows:

“No person born out of the kingdoms of England Scotland or Ireland or the dominions thereunto belonging (although he be naturalized or made a denizen) except such as are born of English parents, shall be capable to be of the Privy Councill or a member of either House of Parliament, or to enjoy any office or place of trust either civill or military or to have any grant of lands tenements or hereditaments from the Crown to himself or to any other or others in trust for him” (b).

This disability, therefore, attaches to those who become British subjects by the first two modes; women being incapacitated by common law, the fourth mode may be passed over, and with regard to the sixth, the private Act of Parliament may contain words removing the disability; otherwise it will attach to a person so naturalized.

As to the third mode, a certificate of naturalization under the Act of 1870 entitles the recipient in the

(a) 57 & 58 Vict. c. 60, s. 1.

(b) 12 & 13 Will. 3, c. 2, s. 3.

United Kingdom to *all political* and other rights, powers, and privileges which a natural-born British subject is entitled to in the United Kingdom, and, therefore, such a person is freed from the political incapacity imposed by the Act of Settlement, while in the United Kingdom, but will be subject to it in any of the British colonies unless expressly exempted by a colonial law.

The case of an infant naturalized under s. 10 of the Act of 1870 creates some difficulty. It was probably meant that such a person, when he came of age, should be exempt from the disability in question and have precisely the same rights as his father, who had obtained a certificate of naturalization. But the Act says he shall be deemed to be a naturalized British subject, and that would bring him within the very words of the Act of Settlement. It might, of course, be argued that the words "deemed to be a naturalized British subject" are equivalent to "have the same status as persons obtaining a certificate under the Act," but apart from the probable intention of the legislature there is nothing in the wording of the Act to support such a contention.

The repeal of the third clause of the Act of Settlement, which was recommended by the Interdepartmental Committee's Report of 1901, would remove this and other legal difficulties, and to a great extent simplify the law.

The principal Personal Rights and Privileges which a British Subject carries with him into Foreign Countries are—

- (a) the privilege of protection by the British Government, subject to any paramount obligation which he may be under by international law, as understood in this country, to any other state of which he may be also a subject or citizen, or in the territory of which he may be residing ;

- (b) the right to sue or be sued in British Consular Courts established under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37) ;
- (c) the right to avail himself of the provisions of the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), or to make his will in accordance with Lord Kingsdown's Act (24 & 25 Vict. c. 114).

An alien who acquires British nationality by any of the six modes enumerated seems to be entitled to all the rights and privileges of a British subject in foreign countries. Some doubt may perhaps arise in the case of persons obtaining certificates of naturalization under the Act of 1870, on account of the wording of s. 7 of the Act and the qualification necessarily inserted in every certificate granted under it. This point has already been discussed (c). If the qualification is added merely to make it clear to applicants for naturalization that our Government does not hold itself bound to protect them, while, without its jurisdiction, in opposition to the claims a foreign state may make upon them, especially if that foreign state is one to which they owe natural allegiance, then it has no legal effect at all, for the privilege of protection while abroad is not a legal right, and, when accorded, is regulated by considerations of policy and expediency and not by legal principles. The Interdepartmental Committee accordingly thus deal with this question in their report : " Whatever may be the true construction of this enactment, there is no great difference in practice between natural-born and naturalized British subjects so far as regards their obligations to any country which may be also entitled to their allegiance. It is frequently the case that a person who is a natural-born British subject but whose father was born in his Majesty's dominions, is also the subject of the foreign country. But the British Government does not regard such a person as

entitled to protection against any obligation imposed by the law of the foreign country so long as he remains within the limits of that country. A naturalized person who is also a subject of a foreign state is, for all practical purposes, exactly in the same position, except that, by the terms of the section referred to, he is not, while in the foreign country of which he remains a subject, 'deemed to be a British subject' at all. In the case supposed, neither the natural-born nor the naturalized British subject could be protected against military service while actually in the state which claims his allegiance" (d).

With regard to privileges (b) and (c), persons who have obtained certificates of naturalization have for years enjoyed these, in spite of the words "in the United Kingdom" being in the certificate, but owing to the qualification they are not entitled to exercise these rights in the country to which they previously owed allegiance, unless they have ceased to be subjects of that country.

It now remains to set out in detail the precise steps by which British nationality may be acquired in each of these six methods :

(1) *Letters of Denization*, the effects of which have already been described in the first chapter (e), are obtainable only upon petition to be presented to the Crown through the Home Office. The fees payable amount to about £120, which sum is no greater than the necessary cost of a private Act of Parliament. To save expense, as many as ten names may be included in the same letters patent, and, if it is intended to invest the petitioner's children with the rights of British nationality, their names must be expressly inserted, for the letters are not retrospective, and s. 10 of the Naturalization Act, 1870, has no application to them.

(d) Report (1901), para. 27.

(e) See pp. 17—19.

Compliance with the prayer of the petition is at the absolute discretion of the Crown, and it cannot be counted on except in exceptional cases in which also Parliament might be induced to grant a private Act of Naturalization; but the procedure by letters patent has this advantage, that it can be set in motion at any time, whereas a Bill in Parliament can only be introduced during a parliamentary session, and is liable to be defeated by a dissolution or prorogation.

The form of the petition and the letters patent from which any further information on this subject that is necessary may be gathered, are as follows:

PETITION FOR LETTERS OF DENIZATION.

To the King's Most Excellent Majesty.

THE HUMBLE PETITION of [*petitioner*] of etc. an alien sheweth as follows:

1. That your petitioner is a subject [*or citizen*] of having been born at on the day of out of your Majesty's allegiance and that the names and nationalities of his parents are and that he is a married man [*or bachelor or widower*] [and has children namely aged years and aged years] and that he is [*state business or profession*] and carries on his said business [*or profession*] at and resides at .

2. That [*here set out in full the public services of the petitioner and members of his family or other special circumstances on the ground of which the application is made*].

3. That your petitioner has flattered himself with a hope of being naturalized a British subject in consideration of his [father's and his own] services but that he has been informed such cannot be the case in consequence of his not residing in the United Kingdom of Great Britain and Ireland [*or other circumstance which makes it impossible or impracticable to comply with the Naturalization Act*] although a hope has been held out to him that under the circumstances of his case letters patent of denization under the Great Seal may be granted to him.

Your petitioner therefore humbly prays your Majesty that you will be pleased of your grace and favour to grant unto him

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the privilege of being a free denizen of your Majesty's United Kingdom of Great Britain and Ireland and the British Dominions beyond the Seas by your Majesty's letters patent under your Majesty's Great Seal.

And your petitioner (as in duty bound) will ever pray etc.

[*Signature of petitioner.*]

LETTERS PATENT OF DENIZATION.

Denization } Edward the Seventh by the grace of God, of the
[*name of* } United Kingdom of Great Britain and Ireland,
petitioner]. } and of the British Dominions beyond the Seas,
King, Defender of the Faith, Greeting.

Whereas [*petitioner*] of etc. hath by his petition humbly represented unto us [*set out the public services rendered by the petitioner and members of his family*] and that the petitioner has flattered himself with a hope of being naturalized a British subject in consideration of his [*father's and his own*] services but that he has been informed such cannot be the case in consequence of [*his not residing in the United Kingdom of Great Britain and Ireland*] still that a hope has been held out to him that under the circumstances of his case letters patent of denization under the Great Seal would be granted to him and that the petitioner therefore humbly prayed that we might be graciously pleased to direct that letters patent under our Great Seal might be issued to him.

Now know ye that we for divers good causes and considerations us hereunto moving of our especial grace and certain knowledge and mere motion have granted and by these presents for us our heirs and successors do grant unto the said [*petitioner*] that he shall and may be a free denizen and liege subject of us our heirs and successors and that as well he as his heirs shall and may be liege subjects of us our heirs and successors and that as well he as his heirs may in all things be treated reputed held and governed as our faithful liege subjects born within our United Kingdom of Great Britain and Ireland and that he and his heirs may from henceforth in and by all things have exercise use and enjoy all and all manner of actions suits and plaints of what nature or kind soever in all our courts places and jurisdictions whatsoever within our said United Kingdom of Great Britain and Ireland or otherwheres within our Dominions and in them to plead and be impleaded answer and be answered defend and be defended as any our faithful liege subject or subjects born or to be born in our

said United Kingdom of Great Britain and Ireland may or can And moreover that he the said [*petitioner*] and his heirs may from henceforth lawfully and with impunity at his and their pleasure acquire receive take have hold purchase and possess lands tenements rents revenues and services and all other hereditaments within our said United Kingdom of Great Britain and Ireland and other our Dominions and may use and enjoy the same to him and his heirs for ever or in any other manner whatsoever and may give sell alienate and bequeath the same to any person or persons as he or they shall think fit and as fully freely quietly entirely and peaceably as any our faithful liege subjects born within our said United Kingdom of Great Britain and Ireland may or can And that he the said [*petitioner*] and his heirs may have and possess all and all manner of liberties franchises and privileges of our said United Kingdom of Great Britain and Ireland and other our Dominions and may use and enjoy the same freely quietly and peaceably as our liege subjects born within the said United Kingdom of Great Britain and Ireland without any disturbance molestation hindrance vexation claim or grievance whatsoever of us our heirs and successors or of any of our ministers or officers or any others whatsoever but notwithstanding will and by these presents we command the said [*petitioner*] that he and his heirs do homage and allegiance to us our heirs and successors and that he and they do pay and contribute lot and scot as other our liege subjects do pay and contribute or as they ought to pay and contribute as is just and that he and his heirs do pay to us our heirs and successors the like customs and subsidies for their goods and merchandizes as aliens do and ought to pay Provided always that the said [*petitioner*] and his heirs do hold and observe all and singular ordinances Acts statutes and proclamations of our said United Kingdom of Great Britain and Ireland as well those already published as those which shall hereafter be published and that he and they be obedient to the same according to the form of the laws and statutes in that behalf.

In Witness, etc.

Witness etc. the — day of —.

By His Majesty's Command.

(2) *The Inhabitants of Conquered and Ceded Territory.*
 —The subjects of a foreign state inhabiting territory conquered by Great Britain and remaining domiciled in such territory become British subjects without doing any formal act or going through any legal ceremony,

for they accept the protection of the King of England by remaining in his territory, and if they desire to retain their former allegiance it is incumbent upon them to change their domicile by removing their persons without undue delay. "A great deal has been said," says Lord MANSFIELD, "and many authorities cited relative to propositions, which are too clear to be controverted; . . . the first is this:

A country conquered by the British arms becomes a dominion of the King in the right of his Crown; and therefore necessarily subject to the legislature, the Parliament of Great Britain.

The second is, that the conquered inhabitants, once received under the King's protection, become subjects, and are to be universally considered in that light, not as enemies or aliens" (f).

The law, with regard to ceded territory is precisely the same, with this distinction, that where a time is given in the cession in which the former inhabitants may elect to retain their own nationality by leaving the ceded territory, it would appear that the status of British subjects is completely acquired by the residents only when the day fixed arrives, and until that time they are only provisionally British subjects. In both cases, in order to become British subjects, the inhabitants of newly acquired territory must be subjects of the former owner, and also have their domicile there (g).

(3) *Certificates of Naturalization*.—The effects of a certificate of naturalization obtained under the Naturalization Act, 1870, have already been explained in the first chapter; the conditions on which they will be granted may be gathered from the instructions

(f) *Campbell v. Hall* (1774), Cowp. 208.

(g) See *Jephson v. Riera* (1835), 3 Knapp, 130, at pp. 147—149, and *In re Bruce* (1832), 2 C. & J. 436, and for the whole subject, Westlake's *International Law*, Part I., Peace, pp. 70—74, *supra*, c. 1, pp. 32, 33.

officially issued by the Home Office, which, for ordinary cases are as follows :

1. Any alien desirous of obtaining a certificate of naturalization should present to one of his Majesty's principal Secretaries of State a memorial praying for the grant of such a certificate.

2. The memorial must state :

- (1) Of what Foreign State the applicant is a subject, his place of birth, and the names and nationality of his parents.
- (2) His name, address in full, age, and occupation.
- (3) Whether he is married, and has any children, under age, residing with him ; if he has, their names and ages and the fact that they are so residing should be stated.
- (4) That during the period of eight years immediately preceding the application the applicant has for five years resided within the United Kingdom, the details of such residence being shown as follows :

			Years.	Months.
From	to	at		
From	to	at		
From	to	at		
			5	

and that he intends to reside in the United Kingdom.

3. The applicant must verify the statements in his memorial by a general declaration made before a magistrate or other person authorised to receive such declaration, in pursuance of the Act 5 & 6 Will. 4, c. 62.

4. The statements in the memorial with respect to the several periods of residence in the United Kingdom which make up the full statutory term of five years must be verified specially, as to both place and time, by a like declaration of some person who, being a natural-born British subject, and not the agent or solicitor of the memorialist, is able to testify to the fact of such residence from personal knowledge, and not from information only. The declaration should state that the declarant is—

- (a) a natural-born British subject ;
- (b) not the agent or the solicitor of the memorialist ; and

- (c) that he testifies to the fact of residence from personal knowledge and not from information only, the manner in which such knowledge was acquired being stated in detail.

Should there be no one such person who has personal knowledge of the memorialist having resided the full statutory term, and should, in consequence, the declaration of two or more persons become necessary for the purpose, the declaration may be made either by each separately or by the declarants jointly, each making his declaration with respect to the period as to which he has personal knowledge ; but if the latter course is followed each declarant must state separately with regard to himself the particulars under headings (a), (b), and (c) above.

5. The statements in the memorial must be further verified generally, and the respectability and loyalty of the applicant vouched for, by a declaration made in like manner by four householders who are natural-born British subjects, and none of whom are either the agent or solicitor of the memorialist. The declaration in each case should state that the declarant is—

- (a) a householder ;
- (b) a natural-born British subject ;
- (c) not the agent or solicitor of the memorialist ; and
- (d) should state the declarant's place of residence and the period during which he has personally known the applicant.

The declaration may be made by the declarants jointly, or by each separately ; if the former course is pursued, each declarant must state for himself separately the particulars (a), (b), (c), and (d) above.

6. No declaration will be received which is not duly stamped with the impressed 2s. 6d. stamp of the Board of Inland Revenue, nor will the Secretary of State accept any declaration made before a commissioner who is the agent or solicitor of the memorialist.

7. The statements in the memorial and the declarations will be made the subject of independent inquiry directed by the Secretary of State.

8. The fee payable upon the grant of a certificate is £5, which will include payments for the registration both of the certificate and of the oath of allegiance.

9. After obtaining the grant of a certificate the grantee must take and subscribe the oath of allegiance, a blank form whereof will be annexed to the certificate.

10. The oath of allegiance may be taken and subscribed—

In England or Ireland—

In the presence of any Justice of the Peace, or any Commissioner (not being the agent or solicitor of the memorialist) authorised to administer oaths in the High Court of Justice.

In Scotland—

In the presence of any Sheriff, Sheriff-Substitute, or Justice of the Peace.

11. The fee for the administration of the oath is 2s. 6d., payable as follows :

In England or Ireland, if the oath is administered by a Justice of the Peace, to the clerk of such Justice, otherwise to the officer administering the oath ; in Scotland, if the oath is administered by a Sheriff or Sheriff-Substitute, to the Sheriff clerk or any of his deputed : if by a Justice of the Peace, to the Clerk of the Peace or any of his deputed.

12. After taking and subscribing the oath of allegiance the grantee of the certificate shall cause the oath to be registered at the Home Office.

13. After registration, the certificate and oath of allegiance will be re-delivered to the grantee of the certificate.

N.B.—Care must be taken that the memorial is made an exhibit to the declarations which accompany it, so as to connect together the memorial and declarations.

The instructions issued to aliens in the service of the Crown applying for certificates of naturalization are very similar to the above. The alien should, however, present his memorial through the head of the department to which he is attached ; and, in addition to the other particulars mentioned in clause 2 above, the memorial must state that during the period of eight years immediately preceding the application the applicant has for five years been in the service of the Crown (*i.e.*, the post in which he has served being specified and the details of the service shown in a form similar to that given above in clause 2 (4) for details of residence) and that he intends to serve under the Crown or reside in the United Kingdom.

If the applicant is residing in the United Kingdom at the time of his application, the verifying declaration must be made before a Justice of the Peace or other person authorised to receive such declaration in pursuance of the Statutory Declarations Act, 1835

(5 & 6 Will. 4, c. 62), and it must bear an impressed 2s. 6d. stamp of the Board of Inland Revenue.

If the applicant is residing at the time of his application outside the United Kingdom, but in the British dominions, he must make a declaration in accordance with the procedure prescribed by the laws of the country in which he is residing.

In the case of an applicant residing out of the British dominions or in a British protectorate, the declaration should be made before an officer in the Diplomatic or Consular Service of his Majesty, or an officer authorised to receive a statutory declaration in a protectorate, or the officer administering the government of the protectorate, as the case may be.

The declarations referred to in clauses 4 and 5 above are not required, and no fee will be charged for the grant of a certificate.

The oath of allegiance may be taken and subscribed :

1. In the United Kingdom, as above mentioned.
2. In the British dominions (other than the United Kingdom), according to the procedure prescribed by the law of the country in which the oath is taken.
3. Out of his Majesty's dominions or in a British protectorate the oath of allegiance may be administered by and subscribed in the presence of an officer in the Diplomatic or Consular Service of his Majesty, or of an officer authorised to administer such oath, or of the officer administering the government of the protectorate, as the case may be.

The provisions of clauses 12 and 13 above are applicable to aliens in the service of the Crown.

There is also a special official form (see p. 107) in the case of aliens serving on British ships, and special instructions are appended to this form. Those only who have for at least three of the qualifying period of five years (which may have been spent partly in service at sea and partly in residence on land) been engaged in sea service on board a British ship and have been at sea within six months of their application, can avail themselves of this form. A great advantage is that the fee of £5 for the certificate is not charged to such applicants.

As has been already stated, the granting or withholding the certificate is in the absolute discretion of the Secretary of State, who has recently intimated that he is not disposed to consider favourably applications for certificates of naturalization from aliens who are not able to read, write, and speak the English language reasonably well unless exceptional circumstances entitling such applicants to special consideration are shown.

The official forms are as follows :

MEMORIAL TO HOME SECRETARY BY ALIEN FOR CERTIFICATE OF
NATURALIZATION. VARIATIONS FOR ALIEN IN SERVICE OF
THE CROWN (*h*).

To the Right Honourable His Majesty's Secretary of
State for the Home Department.

THE HUMBLE MEMORIAL of [*memorialist*] of etc. an alien
SHOWETH :

1. That your memorialist is a subject of [*foreign sovereign*]
having been born at in [*foreign state*] on the day of
and that the names and nationalities of his parents are
[*names and nationalities of parents*].

2. That your memorialist is of the age of years and is
[*state business or profession*].

3. That your memorialist is a married man [*or bachelor or*
widower] and has [*number*] children under age residing with him
[namely aged years and aged years].

4. That your memorialist's settled place of business is at
in the city [*or town or county*] of .

5. That your memorialist has for five years within the period
of the eight years last past resided within the United Kingdom,
viz. :

	Years.	Months.
From [<i>date</i>] to [<i>date</i>] at [<i>address</i>] - -		
From etc. - - - - -		

(*h*) No stamp required.

[During such period your memorialist was out of England on temporary absence as follows : In 19 for months and in 19 for months.]

[Or 5. That your memorialist has for five years within the period of eight years last past been in the service of the Crown, viz. :

	Years.	Months.
From [date] to [date] as [official capacity] -		
From etc. - - - - -		

6. That your memorialist intends to reside permanently within the United Kingdom of Great Britain and Ireland [*or* to continue to serve under the Crown].

7. That your memorialist seeks to obtain the rights and capacities of a natural-born British subject [from a desire to reside and carry on business permanently in the United Kingdom and acquire the rights and duties both civil and political of a natural-born British subject].

Your memorialist therefore humbly prays that a certificate of naturalization be granted to him in pursuance of the Statute 33 Victoria Cap. 14 intituled "An Act to amend the Law relating to the legal condition of Aliens and British Subjects."

[Signature of memorialist.]

DECLARATION BY ALIEN APPLICANT FOR NATURALIZATION
VERIFYING STATEMENTS IN HIS MEMORIAL (i).

I [*declarant*] of etc. do solemnly and sincerely declare that the statements contained in my memorial for a certificate of naturalization which is now produced and shown to me and marked with the letter A. are severally and respectively true in substance and in fact. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared by the said [*declarant*] at
the day of before me a } [*Signature of*
commissioner for oaths. } *declarant.*]

[Signature of commissioner.]

DECLARATION BY NATURAL-BORN BRITISH SUBJECT VERIFYING
THE PERIODS OF RESIDENCE ALLEGED IN THE MEMORIAL (*k*).

I [*declarant*] of etc. do solemnly and sincerely declare that :

1. I am a natural-born British subject and I am not the agent or solicitor of [*memorialist*] of etc. and I do not in any way act as such for him.

2. I have personally known and been intimately acquainted with the said [*memorialist*] for the period of years now last past.

3. I have read the memorial of the said [*memorialist*] praying for a certificate of naturalization which memorial is now produced to me and marked with the letter A. and according to my personal knowledge which is derived from [my having been the occupier of the next house for a period of years last past and having from time to time personally visited the said [*memorialist*] at his residence aforesaid] the statement made therein by the said [*memorialist*] that he has resided at aforesaid from [*date*] to [*date*] is true in substance and in fact.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared etc.

[*Signature of declarant.*]

DECLARATION BY FOUR HOUSEHOLDERS VERIFYING STATE-
MENTS IN MEMORIAL GENERALLY (*l*).

WE [*four declarants*] of etc. jointly and severally do solemnly and sincerely declare as follows :

1. I the said [*first declarant*] declare that I am a householder and a natural-born British subject and that I have personally known and been intimately acquainted with [*memorialist*] of etc. for a period of about years now last past.

2, 3, 4. [*Similar declarations by the other three declarants*].

(*k*) Stamp 2s. 6d.

Where no one declarant can be found to verify from his personal knowledge the whole of the period of residence alleged in the memorial, two or more similar declarations may be made by different persons, but the whole of the period must be verified.

(*l*) Stamp, 2s. 6d.

We jointly and severally declare that :

5. We are not the agents or solicitors of the said [*memorialist*] and we do not nor does any of us act in any way as such for him.

6. We have read the memorial of the said [memorialist] praying for a certificate of naturalization which memorial is now produced and shown to us respectively and marked with the letter A. and according to the best of our knowledge information and belief the several statements made therein by the said [memorialist] are respectively true in substance and in fact.

7. From our respective acquaintance with the manners habits and mode of life of the said [*memorialist*] we do confidently vouch for his loyalty and respectability and verily believe that a certificate of naturalization may with safety and propriety be granted to him as prayed for in his said memorial.

And we jointly and severally make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared etc.

[Signatures of declarants.]

APPLICATION FOR CERTIFICATE OF NATURALIZATION BY ALIEN
SERVING IN A BRITISH SHIP (*m*).

Application and Declaration.

I [*applicant*] do hereby apply to the Secretary of State for the grant of a Certificate of Naturalization, and I do solemnly and sincerely declare that the particulars given in the accompanying

(m) Stamp, 2s. 6d.

The only charges payable in these cases are :

(a) Fee on statutory declaration :

If made before a commissioner of oaths - - - 1s. 6d.

"	"	justice out of court and un-	
		attended by the clerk to the	
		justices - - - -	Nil.

justice attended by the clerk - { Such fee as
may be in force
in the County
or Borough in
which the Oath
or Declaration
is made (gener-
ally 1s. or 1s.
6d.).

(b) An *impressed* Inland Revenue stamp of the value of 2s. 6d. on each declaration.

(c) A fee of 4*d.* for the verification of sea service on each

application signed by me are correct ; and that it is my intention to continue permanently to reside in the United Kingdom or to serve in British ships.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

[*Signature of applicant.*]

Declared etc.

voyage for which no officially authenticated certificate of discharge is produced.

(d) If the certificate is granted by the Secretary of State, the oath of allegiance has to be taken, subscribed and registered, in accordance with instructions accompanying the certificate. The fee for the administration of the oath of allegiance is 2s. 6d., payable as follows :

In England or Ireland, if the oath is administered by a justice of the peace, to the clerk of such justice, otherwise to the officer administering the oath ; in Scotland, if the oath is administered by a sheriff or sheriff-substitute, to the sheriff clerk or any of his deputes ; if by a justice of the peace, to the clerk of the peace or any of his deputes.

The application of an alien serving in a British ship must be on the above form, which may be obtained free of charge from the Home Office, or at the Mercantile Marine Offices at—

Aberdeen.	London : Dock Street.
Avonmouth.	„ Poplar.
Barry.	„ Victoria Docks.
Belfast.	„ Tilbury.
Bristol.	„ Gravesend.
Cardiff.	Manchester.
Cork.	Newcastle-on-Tyne.
Dublin.	Newport, Mon.
Dundee.	Penarth.
Glasgow.	Plymouth.
Greenock.	Shields, North.
Grimsby.	„ South.
Hull.	Southampton.
Leith.	Sunderland.
Liverpool.	Swansea.

The superintendents of the Mercantile Marine Offices at these ports will assist foreign seamen in making their applications, will take care that the form is properly filled up in each case, and that the applicant clearly understands the particulars to which he declares, and will transmit the papers to the Registrar-General of Seamen.

[*The following particulars must be given in the spaces provided on the Form (see note (m), p. 107, supra).*]

Name of applicant in full . . .

Present address . . .

Age and date of birth . . .

Place of birth (n).

Nationality (o).

Names of parents . . .

Nationality of parents (p).

Whether married, and if so, the name and nationality of the wife . . .

Names and ages of children, if any, *specifying those under 21 years of age residing with the applicant in the United Kingdom* (q).

Total length of service in British ships during the last eight years (r) [*particulars must be given as shown on p. 110.*]

(n) The place of birth should be stated in the form of a postal address. It will not be sufficient for the applicant to state, *e.g.*, that he was born at (a village or small town) in Russia; the province, etc., should also be given.

(o) The nationality should be stated accurately, *e.g.*, a Russian Pole should be described as a Russian; a German Pole, or a Bavarian, or a Prussian, should be described as a German.

If an applicant has lost the nationality he acquired at birth, such nationality of origin should nevertheless be specified, and an explanation should be given of the circumstances in which it was lost.

Particulars of any naturalization of an applicant in any foreign country other than that to which he originally owed allegiance should be added.

(p) The foregoing note applies equally to the particulars required of the nationality of the parents.

(q) Children only temporarily absent from home at the date of the application may be regarded as resident with the father. In any case of doubt the question should be referred through the Registrar-General of Seamen to the Secretary of State.

(r) The applicant must establish that he is qualified for naturalization by residence in the United Kingdom; and intervals, during such residence, of service in British ships (*i.e.*, ships registered at ports in the United Kingdom and sailing to or from the United Kingdom) are allowed to count towards making up the qualifying period.

The residence and sea-service together must cover a period of five years within the last eight. The applicant must have served in British ships, as defined above, for at least three years within the last eight. He is also required to declare that it is his

Number of British certificate, if any as master, mate, or engineer, or in fishing service (s).

Particulars of residence of the applicant in the United Kingdom during five years out of the preceding eight when not at sea

Period.		Address.	
From	to	at	.
From	to	at	.
etc.			

Signature of applicant

Date

Place

Transmitted to the Registrar-General of Seamen.

[*Signature of Superintendent.*]

Superintendent of Mercantile
Marine Office.

Place.

Date.

[*The following particulars must be given on the back of the application:*]

PARTICULARS OF SERVICE IN BRITISH SHIPS.

Name of Ship.	Official Number.	Port of Registry.	Rating of Applicant.	Period of Service.			Character.	
				From	To	Years. Months. Days.	For Conduct.	For Ability.

N.B.—The continuous discharge certificate (Dis. A.) and any other certificates of discharge possessed by the applicant should be transmitted with this form of application.

intention to continue to serve on British ships or to reside in the United Kingdom.

Particulars of residence ashore must be given as fully and accurately as possible.

(s) Particulars should be given of any certificates which the applicant holds from the Board of Trade. If he holds no certificates, his present occupation, viz., whether mate, able seaman, cook, etc., should be stated.

CERTIFICATE OF NATURALIZATION OF AN ALIEN. VARIATIONS
FOR AN ALIEN IN THE SERVICE OF THE CROWN (*t*).

Naturalization Acts, 1870.

Home Office, London.

Whereas [*alien*] an alien now residing at [*address*] has presented to me the Right Honourable [*name of Home Secretary*] one of His Majesty's principal Secretaries of State a memorial praying for a certificate of naturalization and alleging that he is a [*subject or citizen of a foreign sovereign or state*] and that during the period of eight years preceding his application he has resided for five years within the United Kingdom and intends when naturalized to reside therein [*or in the period of eight years preceding his application he has been for five years in the service of the Crown as [*description of service*] and intends when naturalized to continue in the service of the Crown [*or reside in the United Kingdom*]*] :

And whereas I have inquired into the circumstances of the case and have received such evidence as I have deemed necessary for proving the truth of the allegations contained in such memorial [*so far as the same relate to the memorialist (u)*] :

Now in pursuance of the authority given to me by the said Acts I grant to the aforesaid [*alien*] this certificate and declare that he is hereby naturalized as a British subject, and that, upon taking the oath of allegiance, he shall in the United Kingdom be entitled to all political and other rights powers and privileges and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom ; with this qualification that he shall not, when within the limits of the foreign state of which he was a subject previously to his obtaining this certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof or in pursuance of a treaty to that effect.

In Witness whereof I have hereto subscribed my name this day of

[*Signature of Home Secretary.*]

(*t*) This form embodies Official Forms A. and A. A.

(*u*) These words are omitted in the certificate given to an alien in the service of the Crown.

OATH OF ALLEGIANCE (x).

I [*deponent*] do swear that I will be faithful and bear true allegiance to his Majesty King Edward his heirs and successors according to law. So help me God.

Sworn and subscribed this day of before me.

[Signature of official.]
Justice of the Peace
[or other official title (x)].

The Secretary of State is also empowered, under the like conditions, to grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, or to any person naturalized previously to the passing of the Act (s. 7).

In the first of these cases the special certificate declares that the grant of it shall not be deemed to be any admission that the recipient was not theretofore a British subject. From the state of the law as to the acquisition of British nationality by birth, it is obvious that the cases are fairly numerous in which it may be advisable to apply for this special certificate in order to quiet any doubt which may exist as to the applicant's nationality. Instances of such cases, without exhausting the whole list, are persons born on board a British merchant ship when in a foreign port or in foreign territorial waters ; persons born on board a foreign ship in a British port or in British territorial waters ; the children of a father (not in the service of the Crown, 33 & 34 Vict. c. 14) who has been naturalized here, born abroad after his naturalization, who have never during infancy resided with him in the United Kingdom (*Re Bourgoise* (1889), 41 Ch. D. 310, and 5 Law Q. Rev. 438) ; and persons naturalized in a British Colony (see s. 16 of the Act), and in consequence ceasing to be subjects of the country of their birth according to its code of laws.

Persons naturalized under the Act of 1844 may naturally desire to be naturalized under the Act of 1870, because, though the conditions precedent are somewhat more onerous, requiring either

(x) The fee payable on the administration of the oath is 2s. 6d. ; see clauses 9—13, pp. 101, 102, *supra*.

residence for five years in the United Kingdom or service under the Crown for a like period, conditions not embodied in the earlier Act, yet the rights conferred by the certificate are far more extensive, including political rights, and the certificate when once obtained is irrevocable.

The instructions issued to applicants under the Act of 1870 who have been already naturalized under the earlier Act are substantially identical with those relating to alien applicants, and need not therefore be set out here. In addition to the ordinary particulars, the memorial must, in the latter case, give the date of the former naturalization ; and in the former, state that the applicant is a person with respect to whose nationality doubt exists, and that he desires a special certificate for the purpose of quieting doubts as to his right to be a British subject. In these cases service under the Crown is accepted in lieu of residence. The fees payable are the same as those payable by ordinary alien applicants.

Certificates of naturalization were, under the Act of 1844, enrolled on the Close Rolls, but under the present Act are registered at the Home Office.

CERTIFICATE OF NATURALIZATION UNDER THE ACTS OF 1870 TO
AN ALIEN NATURALIZED UNDER THE ACT OF 1844.

Naturalization Acts, 1870.

Secretary of State's Office,
Whitehall.

Whereas A.B., an alien, now residing at _____, has presented to me, the Right Honourable E.F., one of her Majesty's Principal Secretaries of State, a memorial, praying for a certificate of naturalization under the Naturalization Acts, 1870, and alleging that he was naturalized in the United Kingdom in pursuance of the Act 7 & 8 Vict. c. 66, on the _____ day _____ 18____, that he was originally a subject of _____ and that in the period of eight years preceding his application he has resided for five years within the United Kingdom [*or has been for five years in the service of the Crown as _____*], and intends, if he receives the certificate of naturalization for which he prays, to reside in the United Kingdom [*or to serve under the Crown*] ; and whereas I have inquired into the circumstances of the case, and have received such evidence as

I have deemed necessary for proving the truth of the allegations contained in such memorial ; so far as the same relate to the memorialist ; now, in pursuance of the authority given to me by the Naturalization Acts, 1870, I grant to the aforesaid A.B. this certificate, and declare that he is hereby naturalized as a British subject, and that, upon taking the oath of allegiance, he shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom ; with this qualification, that he shall not, when within the limits of the foreign State of which he was a natural-born subject [*or* citizen], be deemed to be a British subject, unless he has ceased to be a subject [*or* citizen] of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

In witness whereof I have hereto subscribed my name this
day of 19 .

(Signed) E.F.

SPECIAL CERTIFICATE OF NATURALIZATION TO A PERSON WITH
RESPECT TO WHOSE NATIONALITY A DOUBT EXISTS.

Naturalization Acts, 1870.

Secretary of State's Office,
Whitehall.

Whereas A.B., of , has presented to me, the Right Honourable C.D., one of her Majesty's Principal Secretaries of State, a memorial, praying for a special certificate of naturalization under the above-mentioned Acts, and alleging that he is a person with respect to whose nationality as a British subject a doubt exists, that he is , and that in the period of eight years preceding his application he has resided for five years within the United Kingdom [*or* has been for five years in the service of the Crown as], and intends, if he receives the certificate of naturalization for which he prays, to reside in the United Kingdom [*or* to serve under the Crown] ; and whereas I have inquired into the circumstances of the case, and have received such evidence as I have deemed necessary for proving the truth of the allegations contained in such memorial ; so far as the same relate to the memorialist ; now, in pursuance of the authority given to me by the said Act, and for the purpose of quieting doubts as to the right of the said A.B., to be a British subject, I grant to the aforesaid A.B. this certificate, and declare that he is hereby naturalized as a British subject, and that, upon taking the oath of allegiance, he shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to

all obligations to which a natural-born British subject is entitled or subject in the United Kingdom ; with this qualification, that if it should be proved that the said A.B. was heretofore a subject [*or citizen*] of any other state, he shall not, when within the limits of such state, be deemed to be a British subject, unless he has ceased to be a subject [*or citizen*] of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect. And I further declare that the grant of this special certificate of naturalization shall not be deemed to be any admission that the aforesaid A.B. was not heretofore a British subject.

In witness whereof I have hereto subscribed my name this
day of 19 .

(Signed) C.D.

4. *Marriage of an Alien Woman to a British Subject.*
—An alien woman becomes naturalized by marrying a British subject. For by s. 10 (1) of the Act of 1870, “A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject.”

A section was inserted in the amending Act of 1872 to prevent any married woman being deprived by the operation of this enactment of any interest in property to which she might have become entitled previously to the passing of the Naturalization Act of 1870 (*y*).

On the termination of the marriage, whether by the death of the husband or by divorce, a woman thus naturalized retains her nationality unless something is done to alter her status. This seems to be the obvious legal effect of the enactment, but there has been no decision in the courts upon the point.

5. *The Naturalization of Alien Infants.*—With regard to the naturalization of infants, sub-s. (5) of s. 10 of the Act of 1870, as supplemented by the Naturalization Act of 1895 (58 & 59 Vict. c. 43), provides as follows :

“Where the father, or the mother being a widow, has obtained a certificate of naturalization in the

United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom, or with such father while in the service of the Crown out of the United Kingdom, shall be deemed to be a naturalized British subject."

Infants being under a disability at common law, no provision is made by the Act of 1870 for conferring upon them certificates of naturalization (*z*), nor is there any rule of the common law by which the child of a naturalized British subject is entitled by virtue of his descent alone, to the rights of a British subject.

Apart from the section cited, such a child, whether born before or after the naturalization of its parent, is a British subject only if born within the British dominions, and if born elsewhere, he is an alien (*a*). To make such a child a British subject, there must be residence with the parent as prescribed, yet the length and character of the residence is wholly undefined either by the Act or any case decided under it.

"The expression," says Mr. Dicey, "'during infancy' is ambiguous. It cannot, from the nature of things, mean the whole period of infancy, but it may mean either the whole or a part of the remainder of a child's infancy. If it means a part, what part or proportion of a child's infancy is meant? The answer (it is submitted) must be that the period intended is indefinite,

(*z*) On the other hand, there is nothing in the Act to prevent the Secretary of State from granting a certificate of naturalization to an infant, nor to make such certificate, if granted, invalid.

(*a*) For though born after the certificate of naturalization has been granted, the child cannot have any benefit from the British Nationality Act of 1730 and the other kindred Acts, because, apart from the question whether those Acts are limited to the children of persons born in the British dominions, the certificate under the Act of 1870 does not confer on the parent the rights of a natural-born subject outside the limits of the United Kingdom. See *In re Bourgeoise* (1889), 41 Ch. D., p. 410; and *supra*, p. 60 n.

and that the words 'during infancy' mean such part of the child's infancy as is sufficient to constitute residence. Still, the words taken as they are from an Act of Parliament, are deplorably vague. What circumstances amount to residence of a child with a parent must in each case be a question of fact" (b); but apparently something more than a mere temporary visit is necessary to constitute residence. Difficult questions have been raised with regard to the nationality of the children of persons made denizens or naturalized otherwise than by a certificate under the Act of 1870; for the provisions of the sub-section under discussion do not in any way apply to them. If they are born within the King's dominions they are natural-born subjects at common law; if they are born abroad after the naturalization or denization of their father, it would seem that they are not entitled to the rights of natural-born British subjects under the British Nationality Acts, for in these Acts the words "natural-born British subject" must be construed strictly as persons born within the allegiance of the King, and ought not to be extended so as to include persons having the rights of a natural-born subject conferred upon them by virtue of an Act of Parliament or some other title recognised by the law such as letters patent of denization. If this were not the proper construction of the Acts, the last of them (13 Geo. 3, c. 21) would be wholly unnecessary, and moreover, ABBOTT, C.J., in delivering the judgment of the court in the case of *Doe dem Thomas v. Acklam* (1824), expressly places this interpretation upon the words in question: "We think the sense of these words is very plain; natural-born subjects are mentioned as distinguished from subjects by donation or any other mode. A child born out of the allegiance of the Crown of England is not entitled to be deemed a natural-born subject, unless the father be, at the time of the birth of the child, not a subject

only but a subject by birth. The two characters of subject and subject by birth must unite in the father" (c). Accordingly it may be laid down for law that children born abroad of a father who, though alien born, has become a British subject before the time of their birth are themselves alien born, and it would seem to follow that children born abroad to a parent who acquires the rights of a British subject after the time of their birth are also aliens, unless the status of British subjects is expressly conferred upon them; nor is there any doubt that such is their national status, except in the case of the children of a person who has been naturalized by special Act of Parliament. Such last-mentioned children are asserted by some, on the authority of a passage in Coke upon Littleton, to have the rights of British subjects. The passage relied on draws a distinction between persons made denizens by letters patent and persons naturalized by Act of Parliament, and the learned writer says: "For if he (a denizen) had issue in England before his denization, that issue is not inheritable to his father, but if his father is naturalized by Parliament, such issue shall inherit" (d). It would seem, however, that he is dealing with issue born in England (and therefore natural-born subjects) and referring to the old rule of law, abolished by Act of Parliament in 1700, that descent cannot be traced through an alien ancestor (e). If this view is correct, the mere passage of an Act of Naturalization will not alter the nationality of children already born unless they are expressly mentioned in the Act.

6. *Naturalization by private Act of Parliament* can, as has been already pointed out (f), at the present time be obtained only in very exceptional cases.

(c) 2 B. & C. 794.

(d) Co. Lit. 129a.

(e) 11 & 12 Will. 3, c. 6. See also Co. Lit. 8a; *Collingwood v. Pace* (1656), 1 Vent. 413, and 1 Sid. 193.

(f) See pp. 41—43.

Naturalization Bills are classed as personal Bills, and must be first introduced in the House of Lords. As such, they must be preceded by a petition, signed by the party principally concerned, for leave to bring in the Bill, with a printed copy of the proposed Bill annexed (Standing Orders 149—151).

The following Standing Orders are also applicable :

No. 179. No Bill for naturalizing any person shall be read a second time until the petitioner shall produce a certificate from one of his Majesty's Principal Secretaries of State respecting his conduct, and shall take the oath of allegiance at the Bar of the House.

No. 180. No naturalization Bill shall be read a second time unless the consent of the Crown has been previously signified.

The following are forms of private Acts of Parliament :

ACT OF PARLIAMENT FOR THE NATURALIZATION OF A FOREIGN PRINCE OR OTHER PERSON OF EMINENCE (*g*).

An Act to naturalize [*applicant*] and to grant and confer upon him all the rights privileges and capacities of a natural-born subject of his Majesty the King.

[*Date.*]

Humbly beseeching sheweth unto Your most Excellent Majesty and to the Lords Spiritual and Temporal and Commons in this present Parliament assembled [*applicant*] of etc. [*give title or other description*] :

That your suppliant was born at in the kingdom of
on the day of out of your Majesty's allegiance :

That your suppliant proposes and desires to make his permanent residence within the United Kingdom and to become a naturalized subject of your Majesty ; and your suppliant having given testimony of his loyalty and fidelity to your Majesty and the good of the United Kingdom of Great Britain and Ireland humbly prays :

(*g*) See p. 42.

That it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :

1. [*Applicant*] of etc. shall be naturalized and shall have hold and enjoy all the rights privileges and capacities whatsoever which he would could or might have had held or enjoyed if he had been born within the United Kingdom and a natural-born subject of his Majesty the King any law statute matter or thing to the contrary notwithstanding (*h*).

2. This Act may be cited as [*applicant's*] Naturalization Act, 19 .

ACT OF PARLIAMENT FOR THE NATURALIZATION OF A
PRIVATE PERSON (*i*).

An Act to naturalize [*applicant*] and to grant and confer upon him all the rights privileges and capacities of a natural-born subject of his Majesty the King.

[*Date.*]

Humbly beseeching sheweth unto your most Excellent Majesty and to the Lords Spiritual and Temporal and Commons in this present Parliament assembled [*applicant*] a [*state business or profession*] at present residing at in [*foreign state*] :

That your suppliant was born at on the day of out of your Majesty's allegiance :

That [*state in paragraph form the public services rendered by applicant and members of his family*] :

(*h*) As to these last words, see Historical Survey, pp. 40, 41, *supra*. Words to this effect were not inserted in the Act naturalizing Prince Henry of Battenberg (48 & 49 Vict., private Acts, c. i.), who, nevertheless, held military and other offices from the Crown ; but so long as the disabling words of s. 3 of the Act of Settlement remain unrepealed, such words should be inserted in the case of foreign princes marrying into the Royal Family, or other eminent foreigners becoming naturalized by statute, if it is intended to present them with offices under the Crown. In the case of ordinary individuals obtaining acts of naturalization on special grounds, Parliament might well refuse to allow such words to be inserted.

(*i*) See pp. 42, 43.

[That [*foreign sovereign*] has renounced all jurisdiction over your suppliant :]

That your suppliant under the circumstances hereinbefore appearing is desirous of becoming a subject of his most Gracious Majesty the King :

And whereas your suppliant's application for this Act has been recommended by his Majesty's Secretary of State for Foreign Affairs on the ground of public services rendered by your suppliant [and his family] :

Your suppliant therefore having taken the oath of allegiance to your Majesty humbly prays—

That it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :

1. The said [*applicant*] shall from the date of the passing of this Act be naturalized as a British subject and have hold and enjoy all the rights privileges and capacities whatsoever of a natural-born subject of his Majesty the King.

2. This Act may be cited as [*applicant's*] Naturalization Act, 19 .

CHAPTER V.

THE LOSS AND RESUMPTION OF BRITISH NATIONALITY.

HAVING already seen how an alien may become a British subject, it remains to consider how a British subject may become an alien, and how, having become an alien, he may resume his British nationality.

As there are six different ways in which British nationality may be acquired, otherwise than by birth, so there are six several modes in which it may be lost.

- (1) In the case of a *postnatus* by severance of the Crown of England and that of the kingdom or principality in which he was born.
- (2) By cession or loss of the territory in which one who was a British subject chooses to remain domiciled.
- (3) By voluntary naturalization in a foreign state.
- (4) By declaration of alienage.
- (5) In the case of a woman by marriage to an alien.
- (6) In the case of an infant by the loss of British nationality by his father (or mother, if a widow), and subsequent residence abroad with such parent.

(1), (2) The first two of these modes, which are the only ways in which, at common law, the tie of natural allegiance, when once formed, can be severed, and consequently in which British nationality can be lost, can in the nature of things come into operation only on uncertain and infrequent occasions, and have been already sufficiently discussed in the first chapter (a).

(a) See pp. 50—54, *supra*.

The Indelibility of British Nationality.—The four remaining modes were introduced by the Naturalization Act of 1870, which thus made a considerable inroad upon the ancient theory of the indelibility of British nationality. The theory itself with its consequential maxim, "*Nemo potest exuere patriam*," though shaken, cannot be said to have been altogether destroyed, because it was always conceded that it was possible to break the bond of allegiance by means of an Act of Parliament, which, in the eye of the law, has power to do anything in spite of legal theories and maxims, and it may be said that all the remaining modes to be here considered were introduced by an Act of the legislature which has therefore sanctioned and consented to any severance of allegiance which may be effected by them. It will not be out of place to discuss shortly each of these modes.

(3) *Voluntary Naturalization of a British Subject in a Foreign State.*—By s. 6 of the Act of 1870 :

"Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under any disability voluntarily become naturalized in such state, shall from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject and to be regarded as an alien."

Then follows a proviso enabling a person naturalized in a foreign state before the passing of the Act to remain a British subject by making, within two years of the passing of the Act, a declaration of British nationality, and taking the oath of allegiance in the prescribed manner. This proviso is strictly confined to persons naturalized abroad before 1870 who have made the necessary declaration before May 12th, 1872, and therefore is not at the present time of much practical importance.

Section 15, which also applies to the remaining modes of expatriation, provides that :

“Where any British subject has, in pursuance of this Act, become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.”

For the application of the section, see *In re Trufort* (1887), 36 Ch. D. 600, at p. 612, but it does not apply (a) where the foreign state in which the naturalization takes place is at war with the Crown of England (b) ; (b) where the person naturalized abroad is under a disability, that is to say, is an infant, lunatic, idiot or married woman, and the standard for determining whether any of these disabilities exists is that of English law ; (c) where the naturalization abroad is not “voluntary” upon this point, the report of the Naturalization Laws Committee of 1901 says : “The expression ‘voluntarily naturalized’ is not entirely free from obscurity. Does it imply some act done for the express and primary purpose of obtaining a foreign nationality, or an act which, though voluntary, is not done for this express purpose, but for some other object to which change of nationality is attached as an incident? For instance, different views have been entertained by different legal experts whether the marriage of a British subject with a foreign woman, the legal consequence of which in her country is to invest the husband with her nationality, is voluntary naturalization within the meaning of the section. Or, again, to take an extreme case, suppose that by the law of a foreign state (c) all persons landing on its shores at once become its subjects, would the act of landing with or without a knowledge of the consequence be a

(b) *R. v. Lynch*, [1903] 1 K. B. 444.

(c) See pp. 64, 65, of the Appendix to the Report of the Royal Commission of 1869. Case of *New Granada*.

voluntary naturalization? We think that the law should be made more definite, and that British nationality should not be lost unless the person who is naturalized in the foreign country has expressly applied for naturalization, or done some act from which acceptance of the foreign nationality may reasonably be inferred" (d). Sir Dennis Fitzpatrick in a note which is appended to the report, suggests that for the words of s. 6, above quoted, there should be substituted a clause to the effect that a British subject should cease to be such if he, not being under any disability, acquired the nationality of a foreign state *in pursuance of an official procedure established for that purpose*, and in the course of which he applied for or accepted that nationality. (d) A British subject does not lose his British nationality unless he is personally at the time of his naturalization within the territory of the foreign state which confers it upon him.

4. *A Declaration of Alienage*, that is, a formal written statement made before a competent authority by which the declarant renounces his British nationality, has, under the Act of 1870, the effect of making the declarant, if of full age and not under any disability, thenceforth cease to be a British subject. Such declarations can only be made by three classes of persons :

- (a) Persons born in the British dominions and therefore natural-born British subjects, but also, by reason of their foreign parentage or otherwise, being by the law of some foreign state at the time of their birth subjects or citizens of such state (s. 4).
- (b) Persons born out of the British dominions " of a father being a British subject " (s. 4).

Here again the wording of the Act is unfortunate ; it covers persons born abroad who have the rights of

natural-born British subjects under the British Nationality Act of 1730, but is not wide enough to extend to those who have the same rights under the British Nationality Act of 1772 by reason of their grandfather on the father's side having been a natural-born subject. On the other hand the words are sufficient to include persons born abroad, whose fathers, though born in the United Kingdom, had, before the birth of their children, ceased to be British subjects; but such persons are not given the rights of natural-born subjects by the British Nationality Act of 1730, and therefore can only have occasion to make a declaration of alienage in case they have been naturalized as British subjects and desire to get rid of their acquired nationality, but in all probability the section was never intended to apply to such cases.

It will be observed that, before making the declaration, both of these classes of persons, (a) and (b) probably (e), have a double nationality, and are British subjects at the time of their birth.

- (c) Persons naturalized as British subjects; but only where a convention exists between Great Britain and the country of their origin to the effect that its subjects or citizens, who may become naturalized as British subjects may divest themselves of their status as such subjects (s. 3).

The intention of the legislature was no doubt to enable naturalized persons, in a large number of cases, to get rid of the double nationality, which might arise from their naturalization as British subjects, and it was anticipated that numerous conventions to the effect stated in the section would be made with foreign states, but as a matter of fact the only country with which

- (e) Probably not necessarily, because, as pointed out, class (b) may not be entitled to the benefit of the British Nationality Act of 1730.

such a convention has been made is the United States of America, with whom a supplementary convention was made in 1871, the terms of which may be found in the Schedule to the Naturalization Act of 1872 (35 & 36 Vict. c. 39). In consequence the benefit of making declarations of alienage under s. 3 is confined to a very limited class of persons (*f*).

The forms of declarations of alienage, and regulations relating to them, are as follows:

DECLARATION OF ALIENAGE BY PERSON BORN WITHIN
BRITISH DOMINIONS (*g*).

I [*declarant*] of etc. being held by the common law of Great Britain to be a natural-born subject of His Britannic Majesty by reason of my having been born within His Majesty's dominions and being also held by the law of [*foreign country*] to have been at my birth and to be still a subject [*or citizen*] of that state, hereby renounce my nationality as a British subject.

(Signed) .

Made and subscribed etc.

DECLARATION OF ALIENAGE BY PERSON WHO IS BY ORIGIN A
BRITISH SUBJECT (*h*).

I [*declarant*] of etc. having been born out of His Britannic Majesty's dominions of a father being a British subject do hereby renounce my nationality as a British subject.

(Signed)

Made and subscribed etc.

(*f*) See c. 1, *supra*, p. 58 n.

(*g*) No stamp is required.

This is the Official Form F. For instructions as to its use, see note (*i*), p. 128, *infra*.

(*h*) No stamp required.

This is the Official Form G. For instructions as to its use, see note (*i*), p. 128, *infra*.

DECLARATION OF ALIENAGE BY NATURALIZED BRITISH
SUBJECT (i).

I [*declarant*] of etc. having been naturalized as a British subject on the day of do hereby under the provisions of the order of His Britannic Majesty in Council of the [*date of order*] and of the treaty between Great Britain and [*foreign country*] renounce my naturalization as a British subject, and declare that it is my desire to resume my nationality as a subject [*or citizen*] of [*foreign country*].

(Signed) .

Made and subscribed this day of before me.
(Signed) Justice of the Peace
[*or other official title*].

5. *Marriage of a Female British Subject to an Alien.*

—A woman who is a British subject will become an alien by marrying an alien, for by s. 10 (1) of the Act of 1870 “A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject.”

Observations upon this sub-section have already been made in the previous chapter (*k*).

6. *With regard to the Loss of British Nationality by Infants*, s. 10 (3) of the Act of 1870 provides that—

Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, *and has, according*

(i) No stamp required.

This is the Official Form E.

Declarations of alienage may be made in the presence of any justice of the peace. The declaration must be made in duplicate, the original being retained by the declarant.

(k) See *supra*, p. 115, and also p. 57.

to the laws of such country become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject.

It is to be observed that the words in italics do not occur in the corresponding sub-s. (5), which confers British nationality upon alien infants whose parents obtain certificates of naturalization from the Home Office; so that the mere facts of their parents becoming aliens and residence with them abroad are not sufficient to deprive infants of their character as British subjects, unless by the law of the foreign state in which they are residing with their parents they are themselves made subjects or citizens of that foreign state.

The observations made in the preceding chapter in respect of the interpretation of the terms "during infancy" and "become resident" in the corresponding sub-section apply equally to this sub-section (*l*).

A doubt has been raised as to whether this sub-section applies to the children of a widow who has lost her British nationality by reason of having made a second marriage with an alien, for the very act which makes the mother an alien, namely, the marriage, also makes her cease to be a widow (*m*), and certainly in the converse case the children of an alien widow who marries a British subject do not by residing with her in the United Kingdom acquire the rights of British subjects, for by the words of sub-s. (5) these are only conferred upon them when the mother, being a widow, obtains a certificate of naturalization. The Naturalization Laws Committee thought that this obscurity ought to be cleared up, and the majority recommended that the marriage of a widow, being a British subject, with an alien should not affect the national status of her children by her first husband, whether or not they

(*l*) See *supra*, pp. 116 *et seq.*

(*m*) See Dicey's Conflict of Laws, pp. 193, 194.

became residents in and subjects of the country of the second husband, and that where this is the case they should be empowered to make a declaration of alienage after coming of age (*n*).

Despite the complexity and ambiguity of the subsection, all possible cases are not dealt with. For instance, the case of a natural-born British subject who, while an infant, is naturalized in a foreign country in which neither parent has been naturalized, is not covered; such a person retains a double nationality. He does not cease to be a British subject under the provisions of s. 6, for he was under a disability at the time when he was naturalized, nor can he, either before or after he has reached his majority, make a declaration of alienage under the provisions of s. 4, for he had not a double nationality at the time of his birth. His only means of ridding himself of his British nationality would seem to be to go through a second act of naturalization in some foreign state after he has become of full age.

Readmission to British nationality may be effected in either of two ways:

- (1) By receipt of a certificate of readmission to British nationality from the Secretary of State in the United Kingdom or from the Governor of any British possession.
- (2) In the case of an infant, whose father (or mother, being a widow) has obtained a certificate of readmission to British nationality, by becoming resident during infancy with such father (or mother) in the British dominions.

(1) *Certificate of readmission to British Nationality*.—Section 8 of the Act of 1870 provides that—

“A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act

referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality (o), apply to one of her Majesty's principal Secretaries of State for a certificate (hereinafter referred to as a certificate of readmission to British nationality) readmitting him to the status of a British subject. The said Secretary of State shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

“A statutory alien to whom a certificate of readmission to British nationality has been granted shall, from the date of the certificate of readmission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign State of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign State according to the laws thereof, or in pursuance of a treaty to that effect.

“The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a certificate of readmission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.”

(o) As Prof. Dicey points out, this clearly means a certificate of naturalization (*Conflict of Laws*, p. 187, note 3).

The difference between the effects of a certificate of readmission to British nationality and a certificate of naturalization has been already touched upon in the first chapter (*p*), and the conditions upon which a certificate of readmission will be granted are precisely the same as those laid down for applicants for certificates of naturalization, which have already been set out at length in the fourth chapter (*q*), with, however, this modification, that the governor of any British possession (as well as the Secretary of State in the United Kingdom) may grant a certificate of readmission to British nationality to a statutory alien resident in the possession under his jurisdiction, and that residence in such possession shall be deemed equivalent to residence in the United Kingdom.

Persons under a disability are not entitled to apply for the certificate; but the case of a widow, who has become an alien in consequence of marriage, is specially provided for by sub-s. (2) of s. 10 of the Act. For the effect of this sub-section the note to p. 59 of the first chapter should be referred to.

The instructions issued for the guidance of applicants for naturalization having already been stated at length on p. 100, it is unnecessary to repeat them here; but in the case of applicants for certificate of readmission to British nationality for the second instruction, which relates to the memorial, the following should be substituted:

2. The memorial must state—

- (1) The name, address, age, profession, trade, or other occupation of the applicant, his place of birth, and the names and nationality of his parents.
- (2) Whether the applicant is married and has any children, under age, residing with him, and if so, their names and ages.

(*p*) See pp. 59—60.

(*q*) See pp. 99 *et seq.*

- (3) That the applicant was a natural-born British subject by reason of having been born in British territory, or by reason of his or her father or grandfather, by the father's side, having been a British subject.
- (4) That the applicant became the subject or citizen of a foreign State. The name of the foreign State must be specified, and the mode in which the applicant became an alien. If the applicant became an alien by naturalization, the date of such naturalization must be mentioned ; or if the applicant be a widow who became an alien by marriage with her late husband, the date and place of such marriage, the name of her husband, the date and place of his decease, and the foreign State of which he was a subject, must be mentioned.
- (5) That during the period of eight years immediately preceding the application, the applicant has for five years resided within the United Kingdom, namely :

			Years.	Months.
From (r)	to	at (s)		
From	to	at		
From	to	at		
			5	

or

That during the period of eight years immediately preceding the application, the applicant has been in the service of the Crown (the post in which he has served being specified), viz. :

			Years.	Months.
From	to	as		
From	to	as		
From	to	as		
			5	

- (6) That he intends to reside in the United Kingdom or to serve under the Crown.

(r) The period of residence at each address should be stated as precisely as possible.

(s) The exact address, and, if in town, the name of street and number of house to be given.

The form of a certificate of readmission to British nationality is as follows :

NATURALIZATION ACTS, 1870.

Certificate of Readmission to British Nationality.

(To be granted by one of her Majesty's Principal Secretaries of State.)

Whereas *A. B.* has presented to me, the Right Honourable *E. F.*, one of her Majesty's Principal Secretaries of State, a memorial, praying for a certificate of readmission to British nationality, and alleging that he was a natural-born British subject, and that he became an alien by being naturalized as a subject [*or citizen*] of *G. H.* (*t*) on the day of 18 , that he is , and that in the period of eight years preceding his application he has resided for five years within the United Kingdom [*or has been for five years in the service of the Crown as*], and intends, if he receives the certificate of readmission to British nationality for which he prays, to reside in the United Kingdom [*or to serve under the Crown*] ; and whereas I have inquired into the circumstances of the case, and have received such evidence as I have deemed necessary for proving the truth of the allegations contained in such memorial, so far as the same relate to the memorialist ; and whereas the said *A. B.* has taken the oath of allegiance ; now in pursuance of the authority given to me by the said Acts, I grant to the aforesaid *A. B.* this certificate, and declare that, as from the date of this certificate, but not in respect of any previous transaction, he is hereby readmitted to the status of a British subject ; with this qualification that, within the limits of the foreign State, of which he became a subject, he shall not be deemed to be a British subject, unless he has ceased to be a subject [*or citizen*] of that State according to the laws thereof, or in pursuance of a treaty to that effect.

In witness whereof I have hereto subscribed my name this
day of 19 .

(Signed) *E. F.*

As to the Readmission of Infants to British Nationality.—Sub-section (4) of s. 10 of the Act provides that :

“ Where the father, or the mother being a widow, has obtained a certificate of readmission to British

(*t*) Where the applicant is a widow, the form must be modified accordingly, and recite the allegation in the memorial that the applicant became an alien by marriage with her late husband *L. M.*, a subject [*or citizen*] of *G. H.*

nationality every child of such father or mother who during infancy has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents."

It is to be noted that the amending Act of 1895 (58 & 59 Vict. c. 43) does not extend this sub-section to the case of an infant resident with his father while in the service of the Crown where the latter has obtained a certificate of readmission to British nationality in the same way as it does when the father has obtained a certificate of naturalization. On the other hand, the residence with the parent may be in any part of the British Empire, and is not limited to residence in the United Kingdom as under sub-s. (5).

It should further be noted that though the Act says the infant shall be deemed to have resumed the position of a British subject, he may in fact have never been a British subject beforehand; because if he was born abroad while the father was an alien, he would have been an alien born. Nevertheless, it is assumed that he is entitled to the benefit of the sub-section.

CHAPTER VI.

THE ALIEN'S ACT, 1905.

THE Aliens Act, 1905, deals with three principal subjects:

- (1) It establishes the system of furnishing returns as to aliens landing or embarking at any port in the United Kingdom.
- (2) It contains provisions for the regulation of alien immigration, and creates powers for the prevention of the landing of undesirable immigrants.
- (3) It gives power to the Secretary of State to make orders in certain specified cases for the expulsion of aliens.

Appointment of Officers to Administer the Act, and Designation of Immigration Ports.—Before dealing separately with each of these subjects, it should be stated that by s. 6 of the Act the Secretary of State is required to appoint immigration officers and medical inspectors and other persons for the purpose of carrying the Act into effect at such ports in the United Kingdom as he thinks necessary for the time being, and the expenses incurred in carrying out the provisions of the Act up to an amount approved by the Treasury are to be paid out of moneys provided by Parliament.

The Home Secretary has, under the powers conferred on him by this section, appointed immigration officers and medical inspectors, and established immigration boards at the following thirteen ports, which are now designated immigration ports; namely, Cardiff, Dover, Folkestone, Grangemouth, Grimsby, Harwich, Hull,

Leith, Liverpool, London (including Queenborough), Newhaven, Southampton, and the Tyne ports (comprising Newcastle, North Shields, and South Shields, which are to be deemed to constitute one port for the purpose of the Act) (a).

(1) *Returns as to Aliens*.—Returns relating to alien passengers are provided for by s. 5 of the Act. A subsequent section (b) repeals the Registration of Aliens Act, 1836 (6 & 7 Will. 4, c. 11), so that the only official information now obtainable with regard to aliens entering or leaving the United Kingdom must be derived from the system of furnishing returns of alien passengers established under s. 5 of the Act, and the orders and directions made by the Secretary of State in pursuance of it.

By its terms the master of any ship landing or embarking passengers (c) at any port in the United Kingdom is bound to furnish a return of alien passengers in accordance with the requirements of the Secretary of State, and alien passengers are bound to furnish the master of the ship with the necessary information.

The Home Secretary has ordered that the master of every ship landing alien passengers at any immigration port shall, unless otherwise directed, before allowing any alien passenger to land, furnish to the immigration officer or boarding preventive officer of Customs (d)

(a) See the Preliminary to the Rules and Regulations.

(b) S. 10.

(c) Passenger is made by s. 8 (3) of the Act to include "any person carried on the ship other than the master and persons employed in the working or service of the ship." The definition is thus somewhat wider than that of s. 267 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), which excludes "the master and crew, and the owner, his family and servants."

(d) In the case of an immigrant ship as defined below, the return is to be delivered to the immigration officer; in the case of any other ship to the boarding preventive officer of Customs.

the particulars concerning the number of alien passengers on board, divided into four categories, mentioned in the Form of Return A., which will be found at p. 193 of the Appendix, and also more detailed particulars concerning alien passengers who are not first-class passengers. These last particulars are different in the case of transmigrants and immigrants.

Transmigrants are defined as alien passengers (other than first class) who have in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom. In their case the details to be given are of the full name, sex, nationality, departure from the United Kingdom (port and steamship line), and the country or port of destination outside the United Kingdom (*e*).

Immigrants for this purpose include every alien passenger except (a) first-class passengers; (b) transmigrants as above defined; (c) passengers especially exempted by order of the Secretary of State; and every immigrant, thus defined, is required to sign the form known as Immigrants Form A., which is to be found at p. 196 of the Appendix, under which the following particulars or answers to questions have to be supplied in English: (1) Full name; (2) Age and sex; (3) Nationality; (4) Names, ages, and sex of dependents accompanying (if any); (5) Last permanent place of abode; (6) Proposed place of abode in United Kingdom; (7) Occupation; (8) What means have you in your possession? (9) What prospects have you of decently supporting yourself and your dependents (if any) in the United Kingdom? (10) Have you been convicted of any crime? If so, state nature of crime, date and place of conviction, and sentence.

(*e*) See the form at p. 194, in the Appendix, known as Transmigrants Form A., and s. 8 (1) (b) of the Act.

(11) Have you ever been expelled from the United Kingdom?

Alien seamen under actual contract to join a ship in British waters are required to answer only questions (1), (3), (6) and (7), and the particulars to be given in answer to question (6) are, instead of the proposed place of abode in the United Kingdom, the name of the ship they are about to join, and the port at which she is lying.

This form, when duly signed by the immigrant, must be attached to the Return A. which the master of the ship is required to furnish to the immigration or other officer.

In such cases as may be permitted by the Secretary of State, the Immigrants Form A. 2, which will be found at p. 195 of the Appendix, may be substituted for the Immigrants Form A. This form must be signed by every alien immigrant as above defined, and must be produced to the immigration officer, but need not be attached by the master of the ship to the Return A. In this case particulars as to six matters only need be given. They are as follows: (1) Full name; (2) Sex; (3) Nationality; (4) Occupation; (5) Whether proceeding to a destination outside the United Kingdom; (6) Whether holding a return ticket between foreign country and United Kingdom.

The master of every ship landing alien passengers at any port which is not an immigration port is required immediately on arrival to furnish to the boarding preventive officer of Customs a return giving the total number of alien passengers in all parts of the ship, and the following particulars about each of them, viz., full name, sex, nationality, occupation, whether proceeding to a destination outside the United Kingdom. The Form B., in which this return should be made, will be found at p. 197 of the Appendix.

As to Aliens leaving the United Kingdom, the master of every ship carrying alien passengers is bound to furnish a return, the form of and mode of furnishing which varies according to the destination of the alien passengers. If they are bound for places not in Europe or within the Mediterranean Sea, two returns must be made; the first of alien transmigrants (as defined above), and the second of alien emigrants, which includes all aliens other than first-class passengers and transmigrants as above defined, so that in neither case need first-class passengers be included in the return. The first return must state the total number of alien transmigrants, and the following particulars concerning each of them, viz., full name, sex and port of arrival in the United Kingdom, and the steamship line. The second return must state the number of alien emigrants, and give the following particulars about each of them, viz., full name, sex, nationality, last permanent place of abode in the United Kingdom, length of residence in the United Kingdom, and original port of arrival in the United Kingdom. These returns should be made out in accordance with the Forms C. and D., which will be found at pp. 198, 199, of the Appendix, and must be delivered by the master of the ship to the officer of Customs, from whom a clearance is demanded at the same time as the passengers' list provided for by s. 311 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). It should be added that where any shipping company is prepared to add to the passengers' list such of the information required by either of these Forms C. and D. as is not already shown in that list, the Secretary of State is willing to exempt that company from furnishing these forms separately.

If the aliens are bound for places in Europe or within the Mediterranean Sea, then the master of the ship must furnish a return stating the total number of alien passengers (including first-class passengers, and making no distinction between transmigrants and emigrants),

and giving the following particulars as to each of them, viz., full name, sex, occupation, nationality, country of destination, and whether holding a through ticket to that country from a country outside the United Kingdom. This return should be made in the Form E., which will be found at p. 200 of the Appendix, and delivered in such manner as the Secretary of State may from time to time direct. Shipping companies are, however, at liberty to print their own forms, provided that the required information is clearly given, and that the returns so printed are identical in size and general arrangement with the prescribed forms.

It is to be observed that by s. 5 (3) the Secretary of State may by order waive the necessity of having these returns made in respect of any special class of passengers or voyages, or any special ships or ports, but any such order may be withdrawn at any time at his discretion.

The effect of the orders already made which are to be found at p. 191 has been sufficiently stated in the foregoing summary.

A master of a ship who fails to make the requisite returns or make a false return is guilty of an offence under the Act, and liable upon summary conviction to a fine not exceeding £100 (*f*); and any alien who refuses to give the information required by the master of the ship for the purpose of the returns, or gives any

(*f*) This is the effect of s. 5 (2) and s. 7 (1). It may be thought that the master of a ship making a false return is also, under s. 7 (4), liable to imprisonment for a term not exceeding three months with hard labour. That sub-section applies to a false statement or false representation made to an immigration officer, medical inspector, immigration board, or the Secretary of State; but these returns, though in many cases delivered to an immigration officer, are not statements made to him, and the wording of ss. 5 (2), 7 (1), which expressly refer to the punishment of the offence of making a false return by a shipmaster, seems to preclude the possibility of any intention of the legislature to allow the offence to be also dealt with in a different way under sub-s. (4) of s. 7.

false information is liable, upon summary conviction, to imprisonment for a term not exceeding three months with hard labour.

(2) *The power to prevent the landing of undesirable aliens* is contained in s. 1 of the Act. It is confined to the case of aliens who are both immigrants within the meaning of the Act and are also brought to the United Kingdom in an immigrant ship as defined by the Act. No power is given to prohibit the disembarkation of any alien unless both these conditions are fulfilled.

Definition of Immigrant.—An immigrant is defined by s. 8 as “an alien steerage passenger who is to be landed in the United Kingdom,” and the expression “steerage passenger” includes all passengers (*g*) except such as may be declared by the Secretary of State to be “cabin passengers,” and by Order dated December 19th, 1905, the Home Secretary has declared all such persons as are entitled to use the cabin, state rooms, or saloons where the accommodation is superior to that provided in any other part of the ship devoted to the carrying of passengers to be cabin passengers for the purposes of the Act (*h*).

Moreover, the following two classes of persons are expressly excepted from the definition of immigrants, although they may be alien steerage passengers to be landed in the United Kingdom :

“(a) Any passenger who shows to the satisfaction of the immigration officer or board concerned with the case that he desires to land in the

(*g*) For the definition of “passenger,” see p. 137, note (*c*).

(*h*) The result of this declaration is that, where there is more than one class of accommodation on board a ship, all alien passengers, except those entitled to use the first-class accommodation (or, in short, “first-class” passengers), will be reckoned for the purposes of the Act as alien steerage passengers ; and where there is only one class of accommodation on board, all the alien passengers will be so reckoned. (See the Memorandum issued from the Home Office on December 9th, 1905, s. 5.)

United Kingdom only for the purpose of proceeding within a reasonable time to some destination out of the United Kingdom."

It is clear from the wording of the exception that the question whether any alien comes under it or not will be decided at the discretion of the individual immigration officer or board to which an appeal lies; so that the exception does not impose any real fetter upon the powers of those authorities to refuse aliens the right of landing. It should be added, however, that the Home Secretary, in the Memorandum issued before the Act came into operation, states for the guidance of those about to administer the Act that alien seamen under contract to join a ship in British waters, who, as has already been seen, are required to answer only some of the questions asked in the Immigrants Form A., which must be attached to the return of alien passengers, may be regarded as coming within this exception, and that if satisfactory evidence of such contract is produced, any such seaman shall be deemed not to be an immigrant, and shall not be subject to further inspection; but that seamen landing with the object of seeking engagements shall be subject to inspection as ordinary immigrants (i).

"(b) Any passengers holding prepaid through tickets to some such destination" (*i.e.*, out of the United Kingdom) "if the master or owner of the ship by which they are brought to the United Kingdom, or by which they are to be taken away from the United Kingdom, gives security to the satisfaction of the Secretary of State that, except for the purposes of transit or under other circumstances approved by the Secretary of State, they will not remain in the United Kingdom, or, having been rejected in another country re-enter the

United Kingdom, and that they will be properly maintained and controlled during their transit."

Persons falling under this exception are called transmigrants, and the form of the bond by which the security must be given will be found at p. 217 of the Appendix (*k*).

Transmigrants also are not entirely free from inspection, for opportunity must be afforded to the immigration officer of verifying their numbers and their possession of through tickets (*l*).

Immigrant Ship.—Even although an alien comes within the class of immigrants as above defined, he cannot be prevented from landing unless he is brought to the United Kingdom in an immigrant ship. The expression immigrant ship is defined by s. 8 (2) as "a ship which brings to the United Kingdom more than twenty alien steerage passengers, who are to be landed in the United Kingdom, whether at the same or different ports, or such number of those passengers as may be for the time being fixed by order of the Secretary of the State, either generally or as regards any special ships or ports," and by Order dated December 19th, 1905, the Home Secretary has fixed such number as twelve.

It will be observed that for the purpose of making up this number of twelve, all aliens not declared to be cabin passengers who are on board the ship and are intended to land in the realm are to be included, even although they are to be only temporarily landed, and do not come under the definition of immigrants by reason of their falling under one or other of the exceptions already set out.

Leave to Land.—An "immigrant," if he does not come in an "immigrant ship," may be landed any-

(*k*) See Form 1, p. 217.

(*l*) See *post*, pp. 146, 147.

where in the United Kingdom, and does not require any leave to land; but an "immigrant" who comes in an "immigrant ship" may not be landed in the United Kingdom except at one of the thirteen immigration ports, and may not be landed at one of those ports without leave, which can only be granted after inspection.

The necessary leave is to be obtained from an immigration officer of the port appointed under the Act. From his decision, when leave is granted there is no appeal, but when it is refused an appeal lies to the immigration board of the port, but there is no further or other appeal; it is, however, provided by s. 8 (4) that, on an appeal to an immigration board, six classes of questions (if any of them arises) shall be referred to the Secretary of State, and that the board shall act in accordance with his decision. Leave to land given by an immigration board is equivalent to leave obtained from an immigration officer.

Power of Secretary of State to grant Exemption.—It should be noted that by sub-s. (4) of s. 1, the Secretary of State is authorised to exempt, subject to such conditions as he thinks fit to impose, any immigrant ships from the provisions with regard to inspection and leave to land, provided that he is satisfied that a proper system is being maintained for preventing the embarkation of undesirable aliens on those ships, or if security is given to his satisfaction that undesirable immigrants will not be landed in the United Kingdom from those ships except for the purpose of transit. But any such order of exemption may be withdrawn at any time at the discretion of the Secretary of State.

The way in which it is proposed to exercise this power is indicated by s. 20 of the Memorandum, already referred to (*m*), which reads as follows: "It is

(*m*) See note (*h*), p. 142.

open to any shipping company which is prepared to assure the Secretary of State that undesirable immigrants will not be landed (except for the purpose of transit) from their immigrant ships, to apply for exemption, and offer security. As at present advised, the Secretary of State is prepared to consider applications for exemption which would have the effect of relieving from inspection by the immigration officer and medical inspector alien passengers who are actually booked as second-class passengers on board the ship, *i.e.*, exclusion of (1) alien third-class or deck or steerage passengers, (2) alien passengers securing second-class accommodation merely by paying an excess fare on board ship, and (3) alien passengers holding third-class through tickets but accommodated by arrangement in the second-class on board ship. The effect of this will be that where such exemption is granted the passengers excluded from exemption will alone be subject to inspection."

The security that may be required must be given by bond in the Form No. 2, which is to be found in the Appendix at p. 218.

Procedure on arrival of Immigrant Ships.—The procedure which will take place on the arrival of an immigrant ship prior to and during the inspection is described in the same Memorandum as follows:

"The master of the ship will produce the prescribed return of alien passengers and will sign it in the presence of the immigration officer, who will board the ship at the earliest opportunity. The alien cabin passengers and the exempted alien second-class passengers, if any, will then be free to land."

In any case, where alien transmigrants are carried, it will probably be found convenient to deal with them next, and the only restriction to which they will be subject will be that the immigration officer must have

proper opportunity of verifying the number of the transmigrants and their possession of through tickets. It will depend upon circumstances whether this opportunity will be best afforded before the transmigrants leave the ship, or after they have been conditionally disembarked for the purpose with the approval of the Secretary of State. Where the latter course is desired, application must be made to the Secretary of State for his approval of the arrangements for the control and safe custody of the transmigrants under the rules as to conditional disembarkation made under s. 2 (2) of the Act (n).

Security must be given that the conditions of this disembarkation will be observed, and may be by bond in the Form No. 3 in the Appendix (o). The Secretary of State is prepared to accept for this purpose security given on behalf of the master of a ship by the owner, which may be expressed to cover all the ships of that

(n) *Conditional disembarkation.*—The rules as to conditional disembarkation are rules 7 to 10 which will be found in the Appendix at p. 202. An immigrant conditionally disembarked is liable (by s. 7 (3) of the Act) to be kept in custody in such manner as the Secretary of State directs, and the latter has directed by Order made on December 19th, 1905, that an immigrant who is conditionally disembarked for the purpose of inspection, appeal, or otherwise, shall be in the custody of the master of the ship until leave to land has been given or, if leave is withheld, until he finally leaves the United Kingdom. The preceding rule, No. 6, relates to transmigrants only, and is as follows: "For the purpose of enabling the immigration officer to satisfy himself that any passenger included in a return of transmigrants in respect of any immigrant ship is an alien passenger within the meaning of s. 8 (1) (b) of the Aliens Act, 1905, no passenger so included shall, except where the Secretary of State has sanctioned conditional disembarkation for the purpose, be allowed to leave the ship before the immigration officer has satisfied himself of the accuracy of that return." It is, however, open to question whether this rule is not *ultra vires*. Section 2 (2) of the Act under which it purports to be made empowers the Secretary of State to make rules with respect to the conditional disembarkation of "immigrants" for the purpose of inspection, etc., but transmigrants are by s. 8 (1) (b) expressly excluded from the definition of immigrants.

(o) Page 219.

owner landing alien transmigrants at any port or ports where conditional disembarkation may be sanctioned.

Inspection of Immigrants.—Next will follow the inspection of the alien immigrants by the immigration officer and medical inspector, “which may take place concurrently so as to avoid loss of time.” It will, according to the Act, take place on board ship, unless the immigrants are conditionally disembarked for the purpose, the arrangements as to accommodation, maintenance, control and safe custody of the immigrants having previously been approved by the Secretary of State. Where conditional disembarkation is desired, application for approval may be made in the same way as in the case of transmigrants, and the instructions in the preceding paragraph will apply.

The Act requires that the inspection shall be made as soon as practicable. The question of what is practicable must depend entirely upon circumstances, and it is impossible to lay down any general rule applicable to all ports further than to say that the Secretary of State is of opinion that it would be unreasonable to expect the inspection, save in very exceptional circumstances, to be conducted between the hours of 8 P.M. and 6 A.M. Further, it must be a matter of arrangement, and must depend upon the provision of conveniences, such as suitable artificial light, etc., whether in any case the inspection by the medical inspector can begin as early as 6 A.M. The Secretary of State is anxious to meet the necessities of the traffic by any reasonable arrangements, and will be ready to consider any representations made to him from time to time in regard to any port.

Where the immigrants are conditionally disembarked for the purpose of inspection, the arrangements will, as has already been stated, be subject to the approval of the Secretary of State; and where the inspection takes place on board ship, it is expected by the Secretary of

State that proper arrangements will be made to enable the inspection to be efficient, and to facilitate the work of the immigration officer and medical inspector. It is impossible to set out all the details of such arrangements, but it may be said generally that some system of control will have to be established in each case which will prevent the immigrants who have been given leave to land from mixing again with those who have not yet passed. Further, when it is necessary (as it may be in some cases) for the medical inspector to make a somewhat close examination, he must be enabled to make this examination apart from the rest of the immigrants (*p*).

The four classes of Undesirable Immigrants.—The inspection is held for the purpose of enabling the immigration officer to decide whether or not he shall give leave to land, and this leave he is bound to withhold in the case of any immigrant who appears to him to be undesirable, and by the provisions of s. 2 (3) of the Act any immigrant who comes under any one of four distinct categories of immigrants is to be considered as undesirable, viz. :

- “(a) if he cannot show that he has in his possession or is in a position to obtain the means of decently supporting himself and his dependents (if any).”

It is thus apparent that an immigrant can avoid being placed in this category by proving either one or other of two alternatives, namely: (1) that he is in actual possession of money, or (2) that he can by means of his skill or labour obtain a decent livelihood. The Memorandum above referred to thus deals with these alternatives: “As regards the first alternative, namely, that he *has* means in his possession for decently supporting himself and his family, the Secretary of

State, as at present advised, thinks that the test should be that the immigrant is possessed of £5, with an additional £2 for each dependent, if any, accompanying him. It may be expected that an immigrant in possession of money (his own *bonâ fide* property) to that amount will, if mentally and physically fit, and not liable to rejection under paragraphs (c) or (d) (q), be allowed to land.

“As regards the second alternative requirement, if the immigrant cannot show that he has the above required sum of money, leave to land will in every case be a matter to be decided, after further inquiry, according to the discretion of the immigration officer. His inquiries will be assisted by the forms which every immigrant will be required to fill up (r). The alien has to satisfy the officer that he is in a position to obtain the means of *decently* supporting himself and his family. The immigration officer will have to inquire what funds the alien has to start with, and whether he has a definite trade or occupation. In the case of an alien having a definite trade, the officer will have to consider the state of the labour market in that trade, unless the alien has a definite offer of work at a fair wage. He will be kept furnished so far as possible with information bearing on the prevailing conditions of employment. The officer will also have to inquire as to whether the alien has any proof of competency in his trade, *e.g.*, a seaman could produce his last discharge certificate. Another material point will be whether the alien has any knowledge of the English language. These inquiries will be made to the best of their ability by the immigration officers, who will then decide whether or not to give leave to land, their decision being subject to the right of appeal to the immigration board” (s).

(q) See *infra*, p. 153.

(r) See Appendix.

(s) Memorandum, ss. 35, 36.

An exception to this particular class of undesirable immigrations is introduced by the final words of the sub-section, which are as follows: "leave to land shall not be refused merely on the ground of want of means to any immigrant who satisfies the immigration officer or board concerned with the case that he was born in the United Kingdom, his father being a British subject."

It is useless to dilate upon the probable intention of the draftsman of the Act in inserting these words, but it is enough to point out that the exception thus introduced will not in practice very frequently occur, for all persons born in the United Kingdom, whether or no their fathers were British subjects, are by the common law, with the few exceptions due to the doctrine of ex-territoriality, natural-born British subjects, and therefore, not being aliens, do not come under the definition of immigrants at all, unless they have lost their British nationality in one of the six methods described in Chapter V. In the rare cases in which an immigrant can be brought under this exception, the words "his father being a British subject" will probably be found to introduce further useless complications (*t*).

An immigrant will come under the second class of undesirable immigrants—

"(b) if he is a lunatic or an idiot or owing to any disease or infirmity appears likely to become a charge upon the rates or otherwise a detriment to the public."

(*t*) The words do not correspond with any distinction previously known to the law; for though, under the British Nationality Acts, a person may be entitled to British nationality by reason of his father being a British subject, yet those Acts apply only to persons born abroad and have no application to persons born in the United Kingdom. The words "being a British subject" must mean being at the time of the birth, or in the case of a posthumous child at the time of conception, not at the time of the inspection for the father may be dead at the latter time.

Although these words are somewhat vague and indefinite, and thus leave much to the discretion of the immigration officer, the Secretary of State in the Memorandum states that as regards the mental and physical standard required, no general pronouncement in elaboration of the words of the Act can at present be made (*u*).

In determining this question, the immigration officer will naturally act upon the advice of the medical inspector, and the second of the rules made under s. 2 (2) of the Act provides that where the medical inspector is of opinion that an alien is an undesirable immigrant within this category, he shall state his opinion in the Form No. 1 in the Appendix, and deliver the form to the immigration officer (*x*).

Refugees from Religious or Political Persecution.—With regard to immigrants who might otherwise be classed as undesirables as coming under either of the first two categories, the Act expressly provides that in the case of an immigrant who *proves* that he is seeking admission to this country *solely* to avoid prosecution or punishment on religious or political grounds or for an offence of a political character or prosecution, involving danger of imprisonment or danger to life or limb, on account of religious belief, leave to land shall not be refused on the ground merely of want of means or the probability of his becoming a charge on the rates.

The object of this provision is manifestly to exempt religious and political refugees, if not disqualified by reason of insanity or conviction of crime not of a political character from exclusion from the realm, but the burden of proving that any particular immigrant is entitled to this exemption is placed upon him, and a very wide discretion is left to the immigration officer

(*u*) Memorandum, s. 38.

(*x*) See Appendix, p. 205.

and the immigration board, to which an appeal lies, for it is to their satisfaction that the claim to exemption must be proved, and the nature of the necessary proof is in nowise defined.

An immigrant will be classed as undesirable under the third and fourth categories—

“(c) if he has been sentenced in a foreign country with which there is an extradition treaty for a crime, not being an offence of a political character, which is, as respects that country, an extradition crime within the meaning of the Extradition Act 1870 (*y*); or

“(d) if an expulsion order under this Act has been made in his case” (*z*).

Granting and Refusing Leave to Land.—The Act thus lays down four classes of cases in which leave to land is to be refused, but it nowhere says that leave to land shall be given to any immigrant who cannot be brought under one or other of these categories of undesirables, though it is assumed that such was the intention of the legislature; but the Act provides no means of compelling an immigration officer or board to grant leave to land to an immigrant, even although it is clear that he does not come under any of these categories, but it does expressly enact that, even although an immigrant may be properly classed as undesirable, as coming under one or other of these categories, leave to land shall not be withheld if he “shows to the satisfaction of the immigration officer or board concerned with the case that, having taken his ticket in the United Kingdom and embarked direct therefrom for some other country immediately after a period of residence in the United Kingdom of not less than six months, he has been refused admission to that

(*y*) For the law as to this matter, see Clarke upon Extradition.

(*z*) See *infra*, p. 159.

country and returned direct therefrom to a port in the United Kingdom."

Appeal to the Immigration Board.—The immigration officer may give leave to land verbally, and once leave to land is given, the decision is final, and there is no appeal; but if the immigration officer withholds leave to land, then written notice thereof and of the grounds of the refusal in the Form No. 2 in the Appendix (*a*) must be given by the officer, both to the immigrant himself, and to the master of the ship (*b*). In this case, under s. 1 (2) of the Act, an appeal lies to the immigration board of the port, as is clearly stated at the foot of Form No. 2.

Where it is desired to appeal, notice, which may be verbal, should be given to the immigration officer, if practicable, before he leaves the ship or other place of inspection; but the master, owner or agent of the ship may (and shall if required by an immigrant) within twenty-four hours after the refusal of leave to land, give written notice of appeal (in the Form No. 3 in the Appendix, see p. 207), either by delivering it to the immigration officer or sending it to the nearest Customs house or Customs watch-house (*c*).

Where an appeal is lodged, the immigrant, unless otherwise ordered, will be disembarked for the purpose of being brought before an immigration board, and will be treated as conditionally disembarked until the appeal has been disposed of (*d*).

At every immigration port a list is kept of fit persons having magisterial, business or administrative experience, who are nominated by the Secretary of State, and from this list three persons are summoned as occasion requires for the purpose of forming the immigration board. An immigration board clerk is

(*a*) See p. 206.

(*b*) Rule 3.

(*c*) Rule 4.

(*d*) Rule 10.

appointed at each of the thirteen immigration ports, his duty being to act as clerk to the board, and in particular to keep the list of persons appointed to serve thereon, to summon meetings of the board, to take minutes of their proceedings and furnish reports to the Secretary of State (*e*). If unable personally to perform his duties, he may act through a duly qualified assistant (*f*).

The notice of appeal therefrom received by the immigration officer, must at once be communicated by him to the immigration board clerk (for the Form, see No. 4 in the Appendix at p. 208) (*g*). The latter must then forthwith summon an immigration board to be held, if practicable, not more than twenty-four hours after receipt of the notice (*h*), and in summoning a board it is his duty, so far as practicable, to summon every member on the list in turn; though, if possible, a magistrate is to be included (*i*). The board is to meet at a place appointed by the Secretary of State, and when any magistrate is a member, he is to act as chairman; otherwise the members may choose their own chairman; in the event of any disagreement between the members of a board, the opinion of the majority is to prevail, and there is power to adjourn the hearing where it is thought desirable to make further inquiries (*k*). Notice of the time and place of meeting of the board is to be given by the clerk to the medical inspector where the immigrant has been rejected on medical grounds and in all cases to the immigration officer, who in turn must forthwith communicate it to the immigrant concerned and any other person who may be an appellant (*l*).

The immigration officer (as also the medical inspector, where the rejection has been on medical grounds) is

(*e*) Rules 11, 13.

(*f*) Rule 12.

(*g*) Rule 5.

(*h*) Rule 14.

(*i*) Rule 15.

(*k*) Rules 16 to 19.

(*l*) Rules 20, 21.

bound to attend the hearing of the appeal by the board, and these officers as well as the immigrant (and the master, owner or agent of the ship, if an appellant) are entitled to be heard, but no other person has any right of audience without special leave from the board (*m*). Subject as aforesaid, the board may regulate its own procedure and may put such questions to the alien or other appellant and may make such inquiries as it thinks fit (*n*). It would appear that questions may be put to the alien, whether he or the master of the ship is the appellant; there is, however, no means of compelling him to answer and no punishment for refusal to do so, but in such case the withholding of leave to land would almost certainly be upheld, and the maker of a false answer is liable to imprisonment for three months under s. 7 (4) of the Act.

If on an appeal a question is raised as to any of the four following matters, viz., (1) whether any ship is an immigrant ship; or (2) whether any person is an immigrant, a passenger or a steerage passenger; or (3) whether any offence is an offence of a political character; or (4) whether any crime is an extradition crime, that question shall be referred to the Secretary of State, and the board shall act in accordance with his decision (*o*). On all other questions the discretion of the board is unfettered, and from its decision there is no appeal.

The decision of the board must be either to confirm the refusal of leave to land or itself to give leave to land.

(*m*) It may be thought hard that an appellant, who may be wholly ignorant of the procedure and even of the language in which the proceedings are conducted, should have no right to legal or other assistance at the hearing; but it must be assumed that the immigration boards will act reasonably and, in proper cases, give the necessary leave for hearing the agents or representatives of appellants.

(*n*) Rule 23.

(*o*) Section 8 (4) of the Act. If such a question was raised and not referred to the Secretary of State, the appellant's proper remedy would be to apply for a *mandamus*.

The clerk of the board must in the first case countersign the copy of the original refusal of leave to land retained by the immigration officer, and give notice of the decision (in the Form No. 8 to be found in the Appendix at p. 213) to the master of the ship and to the owner or agent, if an appellant and in the second case, mark with the word "cancelled," and sign the said copy of the original refusal of leave to land and give notice of the decision (in the Form No. 9 to be found in the Appendix at p. 214) to the master of the ship and to the owner or agent, if an appellant (*p*).

Landing without Leave.—Any immigrant who lands and any master of a ship who allows an immigrant to be landed in contravention of the Act, *i.e.*, if he comes on an immigrant ship, without the leave either of the immigration officer or the immigration board, is guilty of an offence under the Act. In the case of an immigrant, such offence is punishable by imprisonment without the option of a fine, and therefore an immigrant who has landed illegally is liable, under the provisions of the third and fourth sections of the Act, to have an expulsion order made against him, and to be returned to the port at which he originally embarked.

The Remedies of Persons unlawfully prevented from Landing.—The Act does not give any right to land in the United Kingdom, but if a person is prevented from landing, and the case cannot be brought within the provisions of the Act, such person will have a legal remedy against those who have prevented his landing. If he is a British subject he has undoubtedly a legal right to land, and can bring an action for being interfered with in the exercise of that right; if he is an alien but does not come within the provisions of the Act, as not being an immigrant or not coming on an immigrant ship as defined by the Act, it may be doubtful

whether he could bring an action for being prevented from landing, for it is at least doubtful whether an alien has any legal right to enter British territory (*q*), but he can nevertheless take proceedings for assault or false imprisonment against those who have actually interfered with him, for such interference can only be justified under the provisions of the Act and these have not been complied with. These proceedings need not necessarily be civil proceedings, for both assault and false imprisonment are indictable misdemeanours at common law and punishable by fine and imprisonment (*r*); nor is it any defence or justification that the person assaulted or imprisoned is an alien (*rr*).

It is manifest that proceedings of this nature are most likely to be taken by persons who are excluded because they are supposed to be aliens, but who afterwards turn out to be British subjects. In order to minimize the volume of such litigation, s. 7 (5) of the Act provides that "if any question arises on any proceedings under this Act, or with reference to anything done or proposed to be done under this Act, whether any person is an alien or not, the onus of proving that that person is not an alien shall lie on that person." The Act thus, in such proceedings, shifts the onus of proof which would otherwise be upon the defendant attempting to justify his conduct, and places it upon the plaintiff or prosecutor who complains that though a British subject he has been treated as an alien. If the latter can discharge that burden, he has his legal remedy.

The questions which by s. 8 (4) must, when raised on appeal to an immigration board, be referred to the Secretary of State (*s*), are precisely those upon which the immigration officer or board are likely to make

(*q*) See *Musgrove v. Chun Teeong Toy*, [1891] A. C. 272, and *supra*, p. 14.

(*r*) Archbold's Criminal Pleadings, pp. 833, 891.

(*rr*) See *The Queen v. Seely* (1860), Bell, C. C. 220, and 29 L. J. M. C. 97.

(*s*) See *supra*, p. 156.

mistakes, and which are matters of law over which they have no discretion. Upon these points the Secretary of State is perhaps little likely to fall into error, but if he does, proceedings may be successfully brought by the injured persons against those who have infringed their rights (*t*).

The expulsion of undesirable aliens is authorised by ss. 3, 4, of the Act. It is effected by an expulsion order, *i.e.*, an order requiring an alien to leave the United Kingdom and thereafter to remain out of the United Kingdom. An expulsion order can only be made by the Secretary of State after receipt of a certificate which can only be made by a court of justice.

These certificates are of two kinds and can be made by a court (a) when an alien is convicted of a crime, in which case no special proceedings are necessary; (b) where special proceedings are taken against the alien for the purpose of obtaining the certificate.

(a) Any court (including a court of summary jurisdiction) may certify that an alien has been convicted by it of any felony or misdemeanour or other offence for which the court has power to impose imprisonment without the option of a fine, or of the offence though not punishable by imprisonment of being a common prostitute or nightwalker loitering in a street or public place in the Metropolitan Police District or an Irish town or Scotch borough, or importuning passengers for the purpose of prostitution within the meaning of the Metropolitan Police Act, 1839, the Towns Improvement

(*t*) In *Musgrove v. Chun Teeong Toy*, [1891] A. C. 272, proceedings of this nature were successfully brought in the courts of Victoria; but the decision was reversed by the Privy Council on the ground that the action of the defendant in that case was justified by the Victorian statutes. It was also hinted but not decided that the form of action as disclosed on the record was wrong because an alien has no right to enter British territory.

The proceedings can only be taken against those who actually commit the trespass, and not against their superior officers, unless they in fact authorise it. See *Raleigh v. Goschen*, [1898] 1 Ch. 73, and *Bainbridge v. Postmaster-General*, [1906] 1 K. B. 178.

(Ireland) Act, 1854, or the Burgh Police (Scotland) Act, 1892 (*u*), and recommend that an expulsion order should be made in his case, either in addition to or in lieu of his sentence.

It is to be observed that in addition to the more serious crimes which are classed as felonies and misdemeanours, there is a long list of offences, many of them of a trivial nature, such as furious driving, being drunk and disorderly, etc., etc., which are punishable with imprisonment, without the option of a fine, though such punishment is only inflicted in very bad cases; yet in all these cases where an alien is convicted of such an offence, a magistrate or magistrates sitting as a court of summary jurisdiction may make a certificate recommending his expulsion, even although he does not think it right to inflict any other punishment upon him. But when such a certificate has been made, it is not to be assumed that the Secretary of State, who has an absolute discretion in the matter, will proceed to make the expulsion order, unless in his opinion on an impartial and independent view of the circumstances it is a proper case to exercise the power of expulsion given by the Act. Once the certificate is made by the court of first instance having jurisdiction over the case, the Secretary of State has power to make the expulsion order even although an appeal has been lodged, whether by case stated or other means allowed by our criminal law, against the original conviction. Here again it is not to be assumed that the Secretary of State will act unreasonably, and in case notice of appeal has been given, he will probably defer his decision as to making the expulsion order until such time as the appeal has been finally disposed of.

(*u*) 2 & 3 Vict. c. 47, s. 54 (11); 17 & 18 Vict. c. 103, s. 72, and¹ 55 & 56 Vict. c. 55, s. 381 (22), (23). This last paragraph is aimed at a separate and distinct offence, on conviction of which also an expulsion order may be recommended to be made. The offence is habitually or persistently importuning, or soliciting, or loitering about for the purpose of importuning or soliciting women or children for immoral purposes.

(b) The second kind of certificates can be made only by a court of summary jurisdiction after proceedings taken for the purpose. These proceedings must be taken within twelve months after the alien has last entered the United Kingdom, and will be regulated in England by rules of court made under s. 29 of the Summary Jurisdiction Act, 1879 (*x*), and in Scotland by rules made under s. 33 of the Summary Procedure (Scotland) Act, 1864 (*y*), and in Ireland by the Lord Chancellor of Ireland. All such rules are to be laid as soon as may be before both Houses of Parliament, and when made will be judicially noticed (*z*). By the rules recently issued by the Lord Chancellor, a copy of which will be found at p. 215 of the Appendix, all proceedings under this section must be commenced by complaint, and will be regulated by the provisions of the Summary Jurisdiction Acts.

If after such proceedings the court of summary jurisdiction certifies that the alien has either (1) within three months from the time at which the proceedings are commenced (a) been in receipt of such parochial relief as disqualifies a person for the parliamentary franchise, or (b) been found wandering without ostensible means of subsistence, or (c) been living under insanitary conditions due to overcrowding; or (2) entered the United Kingdom after the passing of the Act and been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870 (*x*), the Secretary of State may at his discretion, from which there is no appeal, make an expulsion order.

(*x*) 42 & 43 Vict. c. 49, s. 29.

(*y*) 27 & 28 Vict. c. 53, s. 33.

(*z*) See s. 9 (2) of the Act.

(*a*) 5 Edw. 7, c. 13, s. 3 (1) (b).

It should be stated with regard to 1 (a), that by the Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), the receipt of medical or surgical assistance, of whatever kind, at the expense of the parish, is no longer a disqualification for the parliamentary franchise (b). With regard to 1 (b), that the words are very similar, but by no means identical with the words of s. 4 of the Vagrancy Act, 1824 (c), making a rogue and a vagabond every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, *and not giving a good account of himself or herself*. The words in the Aliens Act must be intended to be wider, for the offence under the Vagrancy Act is punishable by imprisonment, and, therefore, in cases coming within it a certificate might be made under s. 3 (1) (a) of the Aliens Act without resorting to special proceedings under clause (b) of that sub-section. And with regard to 1 (c), that there is no definition either in the Act or elsewhere of "insanitary conditions" or of "overcrowding," the decision on these matters is therefore left to the discretion of the magistrates, and it is not to be assumed that they will issue the certificate except in proper cases; but, if they should do so, a discretion is still left to the Secretary of State, who is not bound to make the expulsion order unless he thinks it warranted by the circumstances of the case. It has not, however, been hitherto the policy of our law to place such grave responsibility upon an executive officer of the Government when the only previous judicial proceeding has been before a court of summary jurisdiction. The facts certified under (2) are such as would have made it the duty of the immigration officer to withhold leave to land, if the alien had been an immigrant and

(b) For the cases as to what sort of parochial relief will disqualify, see Mackenzie and Lushington's Parliamentary and Local Government Registration Manual, 2nd ed., p. 274.

(c) 5 Geo. 4, c. 83.

come to the United Kingdom on an immigrant ship (*d*). It is, however, possible that the sentence may have been passed in the foreign country "*in contumacem*" after the alien has left the foreign country and arrived here; but in such a case the proper course would seem to be to take proceedings, not for an expulsion order, but for extradition under the treaty.

As has already been stated, there is a limitation of time for taking these proceedings to obtain the certificate which may result in the issue of an expulsion order. This time limit is twelve months from the time when the alien has *last* entered the United Kingdom; so that an alien who periodically leaves the realm either for business or purposes of health, pleasure, or travel, may be liable to have such proceedings brought against him for an indefinite length of time.

Effects of giving the Certificate and making the Expulsion Order.—An alien in whose case a certificate has been given by a court with a view to making an expulsion order, is liable to be kept in custody until the Secretary of State has decided upon his case, and an alien in whose case an expulsion order has been made is likewise liable to be kept in custody while awaiting the departure of his ship and whilst being conveyed to the ship, and whilst on board the ship until the ship finally leaves the United Kingdom (*e*).

Where an expulsion order has been made the Secretary of State may, if he thinks fit, pay the whole or any part of the expenses of or incidental to the departure from the United Kingdom and the maintenance until departure of the alien and his dependents

(*d*) For he would have been an undesirable immigrant, as coming under category (*c*). See p. 153, *supra*.

(*e*) 5 Edw. 7, c. 13, s. 7 (3). By the Directions dated December 4th, 1905, the alien shall, unless the court otherwise directs and admits him to bail, stand committed to the prison to which the court ordinarily commits prisoners until the orders of the Secretary of State with respect to his expulsion are received. See the Appendix, p. 220.

(if any). There is, however, no provision compelling the dependents to leave the kingdom unless an expulsion order has been made against them also, and this can only be done after obtaining a certificate from a court on one of the grounds already stated.

The master of the ship in which the alien was brought to the United Kingdom, and also the master of any ship belonging to the same owner, shall be liable to pay to the Secretary of State as a debt due to the Crown any sums thus paid by him, and shall under pain of being guilty of an offence under the Act, if required by the Secretary of State, receive the alien and his dependents on board his ship, and afford them, free of charge, a passage to the port of embarkation and proper accommodation and maintenance during the passage. This liability will not attach to the ship-master unless each of the three following conditions has been fulfilled :

- (1) The certificate, upon which the expulsion order was made, has been given within six months after the alien has last entered the United Kingdom ;
- (2) The alien last entered the United Kingdom after the commencement of the Act ; and
- (3) Leave to land was not granted to the alien as an immigrant under the Act (*f*).

The Act gives no express power to deport an alien in whose case an expulsion order has been made ; but if such an alien is at any time found in the United Kingdom in contravention of the order, he is declared to be guilty of an offence under the Act, and therefore liable to be dealt with as a rogue and vagabond under the Vagrancy Act, 1824 (*g*).

Penalties for Offences under the Act.—The penalty to which a person found guilty of an offence under the Act is liable is, if the culprit is the master of a ship, a

(*f*) 5 Edw. 7, c. 13, s. 4.

(*g*) 5 Edw. 7, c. 13, s. 3 (2), and s. 7 (1).

fine not exceeding one hundred pounds. The jurisdiction to try such offences is the same as that given by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), to try offences under that Act, and if the fine is unpaid as and when directed by the court, it may be levied by distress or poinding and sale of the ship, her tackle, furniture, and apparel. If the culprit guilty of an offence under the Act is an immigrant or alien he will, if in Scotland or Ireland, be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour; and, if in England, he will be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4, and be liable to be dealt with accordingly as if the offence were an offence under s. 4 of that Act, under which it is lawful "for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months." Moreover, by s. 6 of the Vagrancy Act, persons offending against it may be apprehended by any person without a warrant.

It is also provided by s. 7 (4) of the Aliens Act that—

"If any immigrant, master of a ship, or other person, for the purposes of this Act, makes any false statement or false representation to an immigration officer, medical inspector, immigration board, or to the Secretary of State, he shall be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour."

Security to be given under the Act.—Security may be required to be given under the Act in three different classes of cases :

- (1) Under s. 1 (4) for exemption from inspection.
- (2) Under s. 2 (2) for conditional disembarkation.
- (3) Under s. 8 (1) (b) for transmigrants.

The Secretary of State has laid down the following lines with regard to the bonds to be given for these purposes :

- (a) That there should in each case be one principal and two sureties.
- (b) That the amount of the bond for conditional disembarkation should vary from £500 to £1,000 according to the average amount of alien traffic.
- (c) That the amount of the bond for exemption from inspection or in respect of transmigrants should vary from £2,000 to £5,000 according to the extent of the exemption or of the traffic.
- (d) That the penalty for a breach of any bond should, pending further experience, be a sum not exceeding £20 per head (*h*).

The official forms of these bonds, which have been issued by the Secretary of State, will be found at pp. 217—220 of the Appendix.

(*h*) Memorandum, s. 33.

APPENDIX OF STATUTES.

BRITISH NATIONALITY.

25 EDWARD 3, STAT. 1, 1350—1 & 1351—2.

A Statute for those who are born in Parts beyond Sea.

Our lord the King, at his Parliament holden at Westminster, at the utas of the Purification of our Lady, the year of his reign of England the five and twentieth, and of France the twelfth, considering the great mischiefs and damages which have happened to the people of his realm of England, as well because that the statutes ordained before this time have not been holden and kept as they ought to be, as because of the mortal pestilence that late reigned, and willing to provide for the quietness and common profit of his said people convenient remedy ; therefore by the assent of the prelates, earls, barons, and other great men, and all the commons of his said realm summoned to the Parliament, hath ordained and established the things underwritten, videlicet : Because that some people be in doubt if the children born in the parts beyond the sea, out of the ligeance of England, should be able to demand any inheritance within the same ligeance, or not, whereof a petition was put in the Parliament late holden at Westminster, the seventeenth year of the reign of our lord the King that now is, and was not at the same time wholly assented ; our lord the King, willing that all doubts and ambiguities should be put away, and the law in this case declared and put in a certainty, hath charged the said prelates, earls, barons, and other wise men of his council, assembled in this Parliament, to deliberate upon this point ; all which of one assent have said, that the law of the crown of England is, and always hath been such, that the children of the Kings of England, in whatsoever parts they be born, in England or elsewhere, be able and ought to bear the inheritance after the death of their ancestors ; which law our said lord the King, the said prelates, earls, barons, and other great men, and all the commons assembled in this Parliament, do approve and affirm for ever. And in the right of other children born out of the ligeance of England in the time of our lord the King, they be of one mind accorded, that Henry son of John de Beaumont, Elizabeth daughter of Guy de Bryan, and Giles son of Ralph Dawbeny, and other which the King will name, which were born beyond the sea, out of the ligeance of England, shall be from henceforth able to have and enjoy their inheritance after the

death of their ancestors, in all parts within the ligeance of England, as well as those that should be born within the same ligeance. And that all children inheritors, which from henceforth shall be born without the ligeance of the King, whose fathers and mothers at the time of their birth be and shall be at the faith and ligeance of the King of England, shall have and enjoy the same benefits and advantages, to have and bear the inheritance within the same ligeance, as the other inheritors aforesaid in time to come ; so always, that the mothers of such children do pass the sea by the license and wills of their husbands. And if it be alledged against any such born beyond the sea, that he is a bastard, in case where the bishop ought to have cognisance of bastardy, it shall be commanded to the bishop of the place where the demand is, to certify the King's court where the plea thereof hangeth, as of old times hath been used in the case of bastardy alledged against them which were born in England.

42 EDWARD 3, c. 10, 1368.

Children born Abroad.

Item, upon the petition put in the Parliament by the commons, desiring that infants born beyond the sea, within the seignories of Calais, (a) and elsewhere, within the lands and seignories that pertain to our lord the King beyond the sea, be as able and inheritable of their heritage in England, as other infants born within the realm of England ; it is accorded, (b) that the common law, and the statute upon the same point another time made, be holden (c).

7 ANNE, c. 5, 1708.

An Act for naturalizing Foreign Protestants.

[*Whole Act except part printed rep. 10 Anne c. 9 (c. 5 Ruff.)*]

3. . . . the children of all natural born subjects born out of the ligeance of her Majesty her heires and successors shall be deemed adjudged and taken to be natural born subjects of this kingdom to all intents constructions and purposes whatsoever.

(a) Guines and Gascony,

(b) and assented

(c) and kept

4 GEO. 2, c. 21, 1730—1.

An Act to explain a Clause in an Act made in the Seventh Year of the Reign of Her late Majesty Queen Anne (for naturalizing foreign Protestants) which relates to the Children of the Natural-born Subjects of the Crown of England or of Great Britain.

Children of Natural-born Subjects.

WHEREAS by an Act of Parliament made in the Seventh year of the reign of her late Majesty Queen Anne [intituled An Act for naturalizing of foreign protestants] (d) it is (amongst other things) enacted that the children of all natural-born subjects, born out of the ligeance of her said late Majesty, her heirs and successors, should be deemed, adjudged, and taken to be natural-born subjects of this kingdom to all intents, constructions, and purposes whatsoever: And whereas in the tenth year of her said late Majesty's reign another Act was made and passed to repeal the said Act (e) (except what related to the children of her Majesty's natural-born subjects born out of her Majesty's allegiance): And whereas some doubts have arisen upon the construction of the said recited clause in the said Act of the seventh year of her late Majesty's reign: Now for the explaining the said recited clause in the said Act relating to children of natural-born subjects, and to prevent any disputes touching the true intent and meaning thereof, may it please your most excellent Majesty that it may be declared and enacted and be it declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present Parliament assembled, and by authority of the same, that all children born out of the ligeance of the crown of England or of Great Britain, or which shall hereafter be born out of such ligeance, whose fathers were or shall be natural-born subjects of the crown of England or of Great Britain, at the time of the birth of such children respectively, shall and may, by virtue of the said recited clause in the said Act of the seventh year of the reign of her said late Majesty and of this present Act be adjudged and taken to be, and all such children are hereby declared to be natural-born subjects of the crown of Great Britain to all intents, constructions, and purposes whatsoever.

2. *Children of parents attainted of treason, or in actual service of foreign princes in enmity with the crown, excepted.*] Provided always, and be it further declared and enacted by the authority aforesaid, that nothing in the said recited Act of the seventh year of her said late Majesty's reign, or in this present Act contained, did, doth, or shall extend, or ought to be construed, adjudged, or taken to extend to make any children born or to be born out of the ligeance of the crown of England or of the crown of Great Britain, to be natural-born subjects of the crown of England or of Great Britain, whose fathers at the time of the birth of such children respectively were or shall be attainted of high treason by judgment, outlawry, or otherwise, either in this kingdom or in Ireland, or whose fathers at the time of the birth of such children respectively by any law or laws made in this kingdom or in Ireland were or shall be liable to the

(d) See *supra*, p. 168.

(e) 10 Anne, c. 9.

penalties of high treason or felony in case of their returning into this kingdom or into Ireland without the licence of his Majesty, his heirs or successors, or of any of his Majesty's royal predecessors, or whose fathers at the time of the birth of such children respectively were or shall be in the actual service of any foreign prince or state then in enmity with the crown of England or of Great Britain, but that all such children are, were, and shall be and remain in the same state, plight, and condition to all intents, constructions, and purposes whatsoever as they would have been in if the said Act of the seventh year of her said late Majesty's reign or this present Act had never been made, any thing herein or in the said Act of the seventh year of her said late Majesty's reign contained to the contrary in any wise notwithstanding.

[S. 3 *rep.* 30 & 31 *Vict.* c. 59. (S.L.R.).]

13 GEORGE 3, c. 21, 1772—3.

An Act to extend the Provisions of an Act, made in the Fourth Year of the Reign of His late Majesty King George the Second, intituled "An Act to explain a Clause in an Act, made in the Seventh Year of the Reign of Her late Majesty Queen Anne, for naturalizing Foreign Protestants, which relates to the Children of the natural-born Subjects of the Crown of England, or of Great Britain," to the Children of such Children.

[Grandchildren of Natural-born Subjects.]

WHEREAS divers natural-born subjects of Great Britain who profess and exercise the protestant religion, through various lawful causes, especially for the better carrying on of commerce, have been, and are, obliged to reside in several trading cities and other foreign places, where they have contracted marriages and brought up families: And whereas it is equally just and expedient that the kingdom should not be deprived of such subjects, nor lose the benefit of the wealth that they have acquired; and therefore that not only the children of such natural-born subjects, but their children also, should continue under the allegiance of his Majesty, and be intituled to come into this kingdom, and to bring hither and realize or otherwise employ their capital; but no provision hath hitherto been made to extend farther than to the children born out of the ligeance of his Majesty, whose fathers were natural-born subjects of the Crown of England, or of Great Britain: May it therefore please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that all persons born, or who hereafter shall be born, out of the ligeance of the Crown of England, or of Great Britain, whose fathers were or shall be, by virtue of a Statute made in the fourth year of King George the Second (*f*) to explain a clause in an Act made in the seventh year of the reign of her Majesty Queen Anne (*g*), for naturalizing foreign

(*f*) 4 Geo. 2, c. 21, *supra*, p. 169.

(*g*) 7 Anne, c. 5, *supra*, p. 168.

protestants, which relates to the natural-born subjects of the Crown of England, or of Great Britain, intitled to all the rights and privileges of natural-born subjects of the Crown of England, or of Great Britain, shall and may be adjudged and taken to be, and are hereby declared and enacted to be, natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever, as if he and they had been and were born in this kingdom, any thing contained in an Act of the twelfth year of the reign of King William the Third, intituled "An Act for the further limitation of the Crown, and better securing the rights and liberties of the subject" (*h*), to the contrary in any wise notwithstanding.

2. *Provisoers, etc., of 4 Geo. 2, c. 21, not repealed by this Act.*] Provided always, . . . that nothing in this present Act contained shall extend, or be construed, adjudged, or taken to extend, to make any persons born or to be born out of the ligeance of the Crown of England, or of the Crown of Great Britain, to be natural-born subjects of the Crown of Great Britain contrary to all or any of the provisoers, exceptions, limitations, and restrictions contained in the aforesaid Act made in the fourth year of the reign of his said late Majesty, or to repeal, abridge, or alter the same; but all such clauses shall be and remain in the same state, plight, and condition, to all intents, constructions, and purposes whatsoever, as they would have been if this present Act had never been made.

[S. 3 rep. 34 & 35 Vict. c. 48. (*Promissory Oaths*).]

4. *Not to defeat any right vested in another person on the last day of this session.*] Provided always, . . . that no person shall be enabled hereby to defeat any estate, right, or interest which upon the last day of this session shall be lawfully vested in any other person, or to claim or demand any estate or interest which shall hereafter accrue, unless such claim or demand be made within five years next after the same shall accrue.

THE LEGITIMACY DECLARATION ACT, 1858.

(21 & 22 VICT. c. 93.)

An Act to enable Persons to establish Legitimacy and the Validity of Marriages, and the Right to be deemed natural-born Subjects.

[2nd August 1858.]

* * * * *

2. *Application to court for declaration of right to be deemed a natural-born subject.*] Any person, being so domiciled (*i*) or claiming as aforesaid (*k*), may apply by petition to the said Court (*l*) for a decree declaratory of his right to be deemed a natural-born subject of her Majesty; and the said Court shall have jurisdiction to hear and determine such application, and to make such decree thereon as to the Court

(*h*) 12 & 13 Will. 3, c. 2.

(*i*) *I.e.*, in England or Ireland.

(*k*) *I.e.*, claiming any real estate situate in England.

(*l*) *I.e.*, the Court for Divorce and Matrimonial Causes; now the Probate Division of the High Court.

may seem just ; and where such application as last aforesaid is made by the person making such application as herein mentioned for a decree declaring his legitimacy or the validity of a marriage, both applications may be included in the same petition ; and every decree made by the said Court shall, except as herein-after mentioned, be valid and binding to all intents and purposes upon Her Majesty and all persons whomsoever.

* * * * *

9. *Any person domiciled in Scotland may insist in an action of declarator that he is a natural-born subject.*] Any person domiciled in Scotland, or claiming any heritable or moveable property situate in Scotland, may raise and insist in an action of declarator before the Court of Session, for the purpose of having it found and declared that he is entitled to be deemed a natural-born subject of Her Majesty ; and the said Court shall have jurisdiction to hear and determine such action of declarator, in the same manner and to the same effect, and with the same power to award expenses, as they have in declarators of legitimacy and declarators of bastardy.

* * * * *

NATURALIZATION.

NATURALIZATION ACT, 1870.

(33 & 34 VICT. C. 14.)

An Act to amend the Law relating to the legal condition of Aliens and British Subjects. [12th May, 1870.]

[*Preamble.*]

1. *Short title.*] The Act may be cited for all purposes as “The Naturalization Act, 1870.”

Status of Aliens in the United Kingdom.

[2. *Capacity of an alien as to property.*] Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject ; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject : Provided,—

- (1) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise :
- (2) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him :

- (3) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act.

3. *Power of naturalized aliens to divest themselves of their status in certain cases.*] Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by Order in Council, to declare that such convention has been entered into by Her Majesty ; and from and after the date of such Order in Council, any person being originally a subject or citizen of the state referred to in such Order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid.

A declaration of alienage may be made as follows ; that is to say,—If the declarant be in the United Kingdom in the presence of any justice of the peace, if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

4. *How British-born subject may cease to be such*]. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign state a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be British subject.

5. *Trial of alien.*] An alien . . . shall be triable in the same manner as if he were a natural-born subject.

Expatriation.

6. *Capacity of British subject to renounce allegiance to Her Majesty.*] Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under any disability voluntarily become naturalized in such state, shall from and after the time of his so having become naturalized in

such foreign state, be deemed to have ceased to be a British subject and to be regarded as an alien ; Provided—

- (1) That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration herein-after referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject ; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect :
- (2) A declaration of British nationality may be made, and the oath of allegiance be taken as follows ; that is to say,—if the declarant be in the United Kingdom in the presence of a justice of the peace ; if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

Naturalization and resumption of British Nationality.

7. *Certificate of naturalization.*] An alien who, within such limited time before making the application herein-after mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United

Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

8. *Certificate of re-admission to British nationality.*] A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate herein-after referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said Secretary of State shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

9. *Form of oath of allegiance.*] The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,

"I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me GOD."

National Status of Married Women and Infant Children.

10. *National status of married women and infant children.*] The following enactments shall be made with respect to the national status of women and children :

- (1) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject :
- (2) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this Act :
- (3) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject :
- (4) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality every child of such father or mother who during infancy has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents :
- (5) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom [*or with such father while in the service of the Crown out of the United Kingdom] shall be deemed to be a naturalized British subject.

Supplemental Provisions.

11. *Regulations as to registration.*] One of Her Majesty's Principal Secretaries of State may by regulation provide for the following matters :—

- (1) The form and registration of declarations of British nationality :
- (2) The form and registration of certificates of naturalization in the United Kingdom :
- (3) The form and registration of certificates of re-admission to British nationality :
- (4) The form and registration of declarations of alienage :
- (5) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions . . . :

[*Words in brackets inserted by 58 & 59 Vict. c. 43, s. 1.]

- (6) The transmission to the United Kingdom for the purpose of registration or safe keeping, or of being produced as evidence of any declarations or certificates made in pursuance of this Act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this Act :
- (7) With the consent of the Treasury the imposition and application of fees in respect of any registration authorized to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this Act.

The said Secretary of State, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act, but shall not so far as respects the imposition of fees be in force in any British possession, and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

12. *Regulations as to evidence.*] The following regulations shall be made with respect to evidence under this Act :

- (1) Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned :
- (2) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate :
- (3) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate :

- (4) Entries in any register authorized to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the said Secretary of State authorized to be inserted in the register :
- (5) The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

Miscellaneous.

13. *Saving of letters of denization.*] Nothing in this Act contained shall affect the grant of letters of denization by Her Majesty.

14. *Saving as to British ships.*] Nothing in this Act contained shall qualify an alien to be the owner of a British ship.

15. *Saving of allegiance prior to expatriation.*] Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

16. *Power of colonies to legislate with respect to naturalization.*] All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

17. *Definition of terms.*] In this Act, if not inconsistent with the context or subject-matter thereof,—

“Disability” shall mean the status of being an infant, lunatic, idiot, or married woman :

“British possession” shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this Act :

“The Governor of any British possession” shall include any person exercising the chief authority in such possession :

“Officer in the Diplomatic Service of Her Majesty” shall mean any Ambassador, Minister or Chargé d’Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d’Affaires, or Secretary of Legation to execute any duties imposed by this Act on an officer in the Diplomatic Service of Her Majesty :

“Officer in the Consular Service of Her Majesty” shall mean and include Consul-General, Consul, Vice-Consul, and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, and Consular Agent.

[S. 18 and Sched. rep. 46 & 47 Vict. c. 39. (S.L.R.)]

NATURALIZATION OATH ACT, 1870.

(33 & 34 VICT. c. 102.)

An Act to amend the Law relating to the taking of Oaths of Allegiance on Naturalization. [10th August, 1870.]

[Preamble recites 33 & 34 Vict. c. 14.]

1. *Regulations as to oaths of allegiance.*] The power of making regulations vested in one of Her Majesty's Principal Secretaries of State by the Naturalization Act, 1870, shall extend to prescribing as follows :

- (1) The persons by whom the oaths of allegiance may be administered under that Act :
- (2) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested :
- (3) The registration of such oaths :
- (4) The persons by whom certified copies of such oaths may be given :
- (5) The transmission to the United Kingdom for the purpose of registration or safe keeping or of being produced as evidence of any oaths taken in pursuance of the said Act out of the United Kingdom, or of any copies of such oaths, also of copies of entries of such oaths contained in any register kept out of the United Kingdom in pursuance of this Act :
- (6) The proof in any legal proceeding of such oaths :
- (7) With the consent of the Treasury, the imposition and application of fees in respect of the administration or registration of any such oath.

The two last paragraphs in the eleventh section of the Naturalization Act, 1870, shall apply to regulations made under this Act.

2. *Penalty on making false declaration.*] Any person wilfully and corruptly making or subscribing any declaration under the Naturalization Act, 1870, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor, and be liable to imprisonment with or without hard labour for any term not exceeding twelve months.

3. *Construction and short title.*] This Act shall be termed "The Naturalization Oath Act, 1870," and shall be construed as one with the Naturalization Act, 1870, and may be cited together with that Act as "The Naturalization Acts, 1870."

NATURALIZATION ACT, 1872.

(35 & 36 VICT. C. 39.)

An Act for amending the Law in certain cases in relation to Naturalization. [25th July 1872.]

[*Preamble recites Supplementary Convention which is set out in the Schedule.*]

1. *Short title.*] This Act may be cited for all purposes as "The Naturalization Act, 1872," and this Act and the Naturalization Act, 1870, may be cited together as "The Naturalization Acts, 1870 and 1872."

2. *Confirmation of renunciation of nationality under the convention.*] Any renunciation of naturalization or of nationality made in manner provided by the said supplementary Convention by the persons and under the circumstances in the said Convention in that behalf mentioned shall be valid to all intents, and shall be deemed to be authorised by the said Naturalization Act, 1870. This section shall be deemed to take effect from the date at which the said supplementary Convention took effect.

3. *Saving clause as to property of married women.*] Nothing contained in the Naturalization Act, 1870, shall deprive any married woman of any estate or interest in real or personal property to which she may have become entitled previously to the passing of that Act, or affect such estate or interest to her prejudice.

SCHEDULE.

CONVENTION between Her Majesty and the United States of America, supplementary to the Convention of May 13, 1870, respecting Naturalization.

Signed at Washington, 23rd February, 1871.

[*Ratifications exchanged at Washington, May 4th, 1871.*]

Whereas by the second article of the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America for regulating the citizenship of subjects and citizens of the contracting parties who have emigrated or may emigrate from the dominions of the one to those of the other party, signed at London, on the 13th of May, 1870, it was stipulated that the manner in which the renunciation by such subjects and citizens of their naturalization, and the resumption of their native allegiance, may be made and publicly declared, should be agreed upon by the governments of the respective countries; Her Majesty the Queen of the United Kingdom of Great

Britain and Ireland and the President of the United States of America, for the purpose of effecting such agreement, have resolved to conclude a supplemental Convention, and have named as their plenipotentiaries, that is to say; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, and Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America; and the President of the United States of America, Hamilton Fish, Secretary of State; who have agreed as follows:

ARTICLE I.

Any person being originally a citizen of the United States who had, previously to May 13, 1870, been naturalized as a British subject, may at any time before August 10th, 1872, and any British subject who, at the date first aforesaid, had been naturalized as a citizen within the United States, may at any time before May 12th, 1872, publicly declare his renunciation of such naturalization by subscribing an instrument in writing, substantially in the form hereunto appended, and designated as Annex A.

Such renunciation by an original citizen of the United States, of British nationality, shall, within the territories and jurisdiction of the United States, be made in duplicate, in the presence of any court authorized by law for the time being to admit aliens to naturalization, or before the clerk or prothonotary of any such court; if the declarant be beyond the territories of the United States, it shall be made in duplicate, before any diplomatic or consular officer of the United States. One of such duplicates shall remain of record in the custody of the court or officer in whose presence it was made; the other shall be, without delay, transmitted to the department of State.

Such renunciation, if declared by an original British subject, of his acquired nationality as a citizen of the United States, shall, if the declarant be in the United Kingdom of Great Britain and Ireland, be made in duplicate, in the presence of a justice of the peace; if elsewhere in Her Britannic Majesty's dominions, in triplicate, in the presence of any judge of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorised by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose; if out of Her Majesty's dominions, in triplicate, in the presence of any officer in the diplomatic or consular service of Her Majesty.

ARTICLE II.

The contracting parties hereby engaged to communicate each to the other, from time to time, lists of the persons who, within their respective dominions and territories, or before their diplomatic and consular officers, have declared their renunciation of naturalization, with the dates and places of making such declarations, and such information as to the abode of the declarants, and the times and places of their naturalization, as they may have furnished.

ARTICLE III.

The present Convention shall be ratified by Her Britannic Majesty, and by the President of the United States by and with the advice and consent

of the Senate thereof, and the ratifications shall be exchanged at Washington as soon as may be convenient.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Washington, the twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-one.

(L.S.) EDWD. THORNTON.
(L.S.) HAMILTON FISH.

ANNEX (A).

I, A.B., of (*insert abode*), being originally a citizen of the United States of America (*or a British subject*), and having become naturalized within the dominions of Her Britannic Majesty as a British subject (*or as a citizen within the United States of America*), do hereby renounce my naturalization as a British subject (*or citizen of the United States*); and declare that it is my desire to resume my nationality as a citizen of the United States (*or British subject*).

Made and subscribed before me in .

(Signed) A.B.

(*insert country or other subdivision, and state province, colony, legation, or consulate*), this day 187 .

(Signed) E.F.,
Justice of the Peace (or other title).

(L.S.) EDWD. THORNTON.
(L.S.) HAMILTON FISH.

NATURALIZATION ACT, 1895.

(58 & 59 VICT. C. 43.)

An Act to amend the Naturalization Act, 1870, so far as respects Children of Naturalized British Subjects in the service of the Crown resident out of the United Kingdom. [6th July 1895.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Amendment of 33 & 34 Vict. c. 14, s. 10, as respects children of naturalized British subjects resident abroad.*] (1) The residence of a child of a naturalized British subject with his father while in the service of the Crown out of the United Kingdom, shall have, and be deemed always to have had, the same effect, for the purpose of subsection five of section ten of the Naturalization Act, 1870, as residence with such father in the United Kingdom.

(2) Subsection five of section ten of the Naturalization Act, 1870, shall have effect as if the words "or with such father while in the service of the Crown out of the United Kingdom" had been inserted therein after the words "part of the United Kingdom," and every copy of the Naturalization Act, 1870, hereafter printed may be printed accordingly.

2. *Short title.*] This Act may be cited as the Naturalization Act, 1895.

MERCHANT SHIPPING ACT, 1894.

(57 & 58 VICT. c. 60.)

An Act to consolidate Enactments relating to Merchant Shipping.
[25th August 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

REGISTRY.

Qualification for owning British Ships.

1. *Qualification for owning British ships.*] A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships) ; namely,—

- (a) Natural-born British subjects :
- (b) Persons naturalized by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession :
- (c) Persons made denizens by letters of denization ; and
- (d) Bodies corporate established under and subject to the laws of some part of Her Majesty's dominions, and having their principal place of business in those dominions :

Provided that any person who either—

- (i) being a natural-born British subject has taken the oath of allegiance to a foreign sovereign or state or has otherwise become a citizen or subject of a foreign state ; or
- (ii) has been naturalized or made a denizen as aforesaid ;

shall not be qualified to be owner of a British ship unless, after taking the said oath, or becoming a citizen or subject of a foreign state, or on or after being naturalized or made denizen as aforesaid, he has taken the oath of allegiance to Her Majesty the Queen, and is during the time he is owner of the ship either resident in Her Majesty's dominions, or partner in a firm actually carrying on business in Her Majesty's dominions.

* * * * *

PART XIII.

LEGAL PROCEEDINGS.

* * * * *

Jurisdiction.

684. *Provision as to jurisdiction in case of offences.*] For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

685. *Jurisdiction over ships lying off the coasts.*] (1) Where any district within which any court, justice of the peace, or other magistrate, has jurisdiction either under this Act or under any other Act or at common law for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice, or magistrate, shall have jurisdiction over any vessel being on, or lying or passing off, that coast, or being in or near that bay, channel, lake, river, or navigable water, and over all persons on board that vessel or for the time being belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the court, justice, or magistrate.

(2) The jurisdiction under this section shall be in addition to and not in derogation of any jurisdiction or power of a court under the Summary Jurisdiction Acts.

686. *Jurisdiction in case of offences on board ship.*] (1) Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port or harbour or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions, which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed.

(2) Nothing in this section shall affect the Admiralty Offences (Colonial) Act, 1849.

* * * *

Detention of Ship and Distress on Ship.

* * * *

693. *Sums ordered to be paid leviable by distress on ship.*] Where any court, justice of the peace, or other magistrate, has power to make an order directing payment to be made of any seaman's wages, fines, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the court, justice of the peace, or magistrate who made the order may, in addition to any other powers they may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or pouding and sale of the ship, her tackle, furniture, and apparel.

* * * *

ALIENS ACT, 1905.

(5 EDW. 7, c. 13.)

An Act to amend the Law with regard to Aliens.

[11th August 1905.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Regulation of Alien Immigration.

1. *Power to prevent the landing of undesirable immigrants.*] (1) An immigrant shall not be landed in the United Kingdom from an immigrant ship **except** at a port at which there is an immigration officer appointed under this Act, and shall not be landed at any such port without the leave of that officer given after an inspection of the immigrants made by him on the ship, or elsewhere if the immigrants are conditionally disembarked for the purpose, in company with a medical inspector, such inspection to be made as soon as practicable, and the immigration officer shall withhold leave in the case of any immigrant who appears to him to be an undesirable immigrant within the meaning of this section.

(2) Where leave to land is so withheld in the case of any immigrant, the master, owner, or agent of the ship, or the immigrant, may appeal to the immigration board of the port, and that board shall, if they are satisfied that leave to land should not be withheld under this Act, give leave to land, and leave so given shall operate as the leave of the immigration officer.

(3) For the purposes of this section an immigrant shall be considered an undesirable immigrant—

- (a) if he cannot show that he has in his possession or is in a position to obtain the means of decently supporting himself and his dependents (if any); or
- (b) if he is a lunatic or an idiot, or owing to any disease or infirmity appears likely to become a charge upon the rates or otherwise a detriment to the public; or
- (c) if he has been sentenced in a foreign country with which there is an extradition treaty for a crime, not being an offence of a political character, which is, as respects that country, an extradition crime within the meaning of the Extradition Act, 1870 (a); or
- (d) if an expulsion order under this Act has been made in his case;

but, in the case of an immigrant who proves that he is seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds or for an offence of a political character, or persecution, involving danger of imprisonment or danger to life or limb, on account of religious belief, leave to land shall not be refused on the ground merely of want of means, or the

probability of his becoming a charge on the rates, nor shall leave to land be withheld in the case of an immigrant who shows to the satisfaction of the immigration officer or board concerned with the case that, having taken his ticket in the United Kingdom and embarked direct therefrom for some other country immediately after a period of residence in the United Kingdom of not less than six months, he has been refused admission in that country and returned direct therefrom to a port in the United Kingdom, and leave to land shall not be refused merely on the ground of want of means to any immigrant who satisfies the immigration officer or board concerned with the case that he was born in the United Kingdom, his father being a British subject.

(4) The Secretary of State may, subject to such conditions as he thinks fit to impose, by order exempt any immigrant ships from the provisions of this section if he is satisfied that a proper system is being maintained for preventing the embarkation of undesirable immigrants on those ships, or if security is given to his satisfaction that undesirable immigrants will not be landed in the United Kingdom from those ships except for the purpose of transit.

Any such order of exemption may be withdrawn at any time at the discretion of the Secretary of State.

(5) Any immigrant who lands, and any master of a ship who allows an immigrant to be landed, in contravention of this section shall be guilty of an offence under this Act, but an immigrant conditionally disembarked shall not be deemed to have landed so long as the conditions are complied with.

2. *Immigration board and rules.*] (1) The immigration board for a port shall consist of three persons summoned in accordance with rules made by the Secretary of State under this Act out of a list approved by him for the port comprising fit persons having magisterial, business, or administrative experience.

(2) A Secretary of State may make rules (b) generally with respect to immigration boards and their officers, and with respect to appeals to those boards, and with respect to the conditional disembarkation of immigrants for the purpose of inspection, appeals, or otherwise, and may by those rules amongst other things provide for the summoning and procedure of the board, and for the place of meeting of the board, and for the security to be given by the master of the ship in the case of immigrants conditionally disembarked. Rules made under this section shall provide for notice being given to masters of immigrant ships and immigrants informing them of their right of appeal, and also, where leave to land is withheld in the case of any immigrant by the immigration officer, for notice being given to the immigrant and the master of the immigrant ship of the grounds on which leave has been withheld.

Expulsion of Undesirable Aliens.

3. *Power of Secretary of State to make an expulsion order.*] (1) The Secretary of State may, if he thinks fit, make an order (in this

(b) See pp. 201 *et seq.*

Act referred to as an expulsion order) requiring an alien to leave the United Kingdom within a time fixed by the order, and thereafter to remain out of the United Kingdom—

- (a) if it is certified to him by any court (including a court of summary jurisdiction) that the alien has been convicted by that court of any felony, or misdemeanour, or other offence for which the court has power to impose imprisonment without the option of a fine, or of an offence under paragraph twenty-two or twenty-three of section three hundred and eighty-one of the Burgh Police (Scotland) Act, 1892, or of an offence as a prostitute under section seventy-two of the Towns Improvement (Ireland) Act, 1854, or paragraph eleven of section fifty-four of the Metropolitan Police Act, 1839, and that the court recommend that an expulsion order should be made in his case, either in addition to or in lieu of his sentence; and
 - (b) if it is certified to him by a court of summary jurisdiction after proceedings taken for the purpose within twelve months after the alien has last entered the United Kingdom, in accordance with rules of court made under section twenty-nine of the Summary Jurisdiction Act, 1879, that the alien—
 - (i) has, within three months from the time at which proceedings for the certificate are commenced, been in receipt of any such parochial relief as disqualifies a person for the parliamentary franchise, or been found wandering without ostensible means of subsistence, or been living under insanitary conditions due to overcrowding; or
 - (ii) has entered the United Kingdom after the passing of this Act, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is, as respects that country, an extradition crime within the meaning of the Extradition Act, 1870.
- (2) If any alien in whose case an expulsion order has been made is at any time found within the United Kingdom in contravention of the order, he shall be guilty of an offence under this Act.

4. *Expenses of return of alien, etc.*] (1) Where an expulsion order is made in the case of any alien, the Secretary of State may, if he thinks fit, pay the whole or any part of the expenses of or incidental to the departure from the United Kingdom and maintenance until departure of the alien and his dependents (if any).

(2) If an expulsion order is made in the case of any alien (not being an alien who last entered the United Kingdom before the commencement of this Act, or an immigrant in whose case leave to land has been given under this Act) on a certificate given within six months after he has last entered the United Kingdom, the master of the ship in which he has been brought to the United Kingdom and also the master of any ship belonging to the same owner shall be liable to pay to the Secretary of State as a debt due to the Crown any sums paid by the Secretary of State under this

section in connection with the alien, and shall, if required by the Secretary of State, receive the alien and his dependents (if any) on board his ship, and afford them free of charge a passage to the port of embarkation and proper accommodation and maintenance during the passage.

(3) If the master of a ship fails to comply with the provisions of this section as to giving a passage to an alien or his dependents, he shall be guilty of an offence under this Act.

General.

5. *Returns as to aliens.*] (1) The master of any ship landing or embarking passengers at any port in the United Kingdom shall furnish to such person and in such manner as the Secretary of State directs a return giving such particulars with respect to any such passengers who are aliens as may be required for the time being by order of the Secretary of State (c), and any such passenger shall furnish the master of the ship with any information required by him for the purpose of the return.

(2) If the master of a ship fails to make the return required by this section, or makes a false return, he shall be guilty of an offence under this Act, and if any alien refuses to give information required by the master of the ship for the purpose of the return under this section, or gives any false information for the purpose, he shall be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour.

(3) The Secretary of State may by order exempt from the provisions of this section any special class of passengers or voyages, or any special ships or ports, but any such order may be withdrawn at any time at his discretion.

6. *Appointment of officers, and expenses.*] (1) The Secretary of State shall appoint, at such ports in the United Kingdom as he thinks necessary for the time being, immigration officers and medical inspectors, and may appoint or employ such other officers or persons as may be required for the purposes of immigration boards, or for the purpose of the returns to be given under this Act, or otherwise for carrying this Act into effect, and the salary and remuneration of any officers, inspectors, or persons so appointed or employed, and any expenses otherwise incurred in carrying this Act into effect (including such payment as may be sanctioned by the Treasury for the attendance of any person as a member of an immigration board to hear appeals), shall, up to an amount approved by the Treasury, be paid out of moneys provided by Parliament.

(2) The Secretary of State may arrange with the Commissioners of Customs or any other Government department or any port sanitary authority for the appointment or employment of officers of Customs or officers of that department or authority as officers under this Act.

(3) The Secretary of State shall make known, in such manner as he thinks best suited for the purpose, the ports at which immigration officers are for the time being appointed under this Act.

(c) See Orders and Directions, December 19, 1905, at p. 191.

7. *Supplemental provisions.*] (1) Any person guilty of an offence under this Act shall, if the offence is committed by him as the master of a ship, be liable, on summary conviction, to a fine not exceeding one hundred pounds, and, if the offence is committed by him as an immigrant or alien, be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and be liable to be dealt with accordingly as if the offence were an offence under section four of that Act. [*As to Scotland and Ireland, see s. 9.*]

(2) Sections six hundred and eighty-four, six hundred and eighty-five, and six hundred and eighty-six of the Merchant Shipping Act, 1894 (which relate to the jurisdiction of courts and justices), shall apply with respect to jurisdiction under this Act as they apply with respect to jurisdiction under that Act, and section six hundred and ninety-three of the Merchant Shipping Act, 1894 (which relates to the levying of sums ordered to be paid by distress on a ship), shall apply with respect to any fines or other sums of money to be paid under this Act by the master of a ship as it applies with respect to fines and other sums of money to be paid under that Act.

(3) Any immigrant who is conditionally disembarked, and any alien in whose case an expulsion order is made, while awaiting the departure of his ship, and whilst being conveyed to the ship, and whilst on board the ship until the ship finally leaves the United Kingdom, and any alien in whose case a certificate has been given by a court, with a view to the making of an expulsion order under this Act, until the Secretary of State has decided upon his case, shall be liable to be kept in custody in such manner as the Secretary of State directs, and whilst in that custody shall be deemed to be in legal custody. [*See Orders and Directions, pp. 192, 220.*]

(4) If any immigrant, master of a ship, or other person, for the purposes of this Act, makes any false statement or false representation to an immigration officer, medical inspector, immigration board, or to the Secretary of State, he shall be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour.

(5) *Onus of proving that he is not an alien.*] If any question arises on any proceedings under this Act, or with reference to anything done or proposed to be done under this Act, whether any person is an alien or not, the onus of proving that that person is not an alien shall lie on that person.

(6) In carrying out the provisions of this Act, due regard shall be had to any treaty, convention, arrangement, or engagement with any foreign country.

8. *Definitions.*] (1) The expression "immigrant" in this Act means an alien steerage passenger who is to be landed in the United Kingdom, but does not include—

(a) Any passenger who shows to the satisfaction of the immigration officer or board concerned with the case that he desires to land in the United Kingdom only for the purpose of proceeding within a reasonable time to some destination out of the United Kingdom; or

(b) Any passengers holding prepaid through tickets to some such destination, if the master or owner of the ship by which they are brought to the United Kingdom, or by which

they are to be taken away from the United Kingdom, gives security to the satisfaction of the Secretary of State that, except for the purposes of transit or under other circumstances approved by the Secretary of State, they will not remain in the United Kingdom, or, having been rejected in another country re-enter the United Kingdom, and that they will be properly maintained and controlled during their transit.

(2) The expression "immigrant ship" in this Act means a ship which brings to the United Kingdom more than twenty alien steerage passengers, who are to be landed in the United Kingdom, whether at the same or different ports, or such number [*twelve—see Orders and Directions*, p. 192] of those passengers as may be for the time being fixed by order of the Secretary of State, either generally or as regards any special ships or ports.

(3) The expression "passenger" in this Act includes any person carried on the ship other than the master and persons employed in the working, or service, of the ship, and the expression "steerage passenger" in this Act includes all passengers except such persons as may be declared by the Secretary of State to be cabin passengers by order made either generally or as regards any special ships or ports. [*See Orders and Directions*, p. 192.]

(4) If any question arises under this Act on an appeal to an immigration board whether any ship is an immigrant ship within the meaning of this Act, or whether any person is an immigrant, a passenger, or a steerage passenger, within the meaning of this Act, or whether any offence is an offence of a political character, or whether a crime is an extradition crime, that question shall be referred to the Secretary of State in accordance with rules made under this Act, and the board shall act in accordance with his decision.

(5) The Secretary of State may withdraw or vary any order made by him under this section.

9. *Application of Act to Scotland and Ireland.*] (1) In the application of this Act to Scotland and Ireland the words "be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour" shall be substituted for the words "be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and be liable to be dealt with accordingly as if the offence were an offence under section four of that Act."

(2) Section thirty-three of the Summary Procedure (Scotland) Act, 1864 (*d*), shall be substituted as respects Scotland for section twenty-nine of the Summary Jurisdiction Act, 1879; and the Lord Chancellor of Ireland may, as respects Ireland, make rules for the purposes of this Act for which rules may be made under section twenty-nine of the Summary Jurisdiction Act, 1879; and all rules so made shall be laid, as soon as may be, before both Houses of Parliament.

10. *Short title and commencement, and repeal.*] (1) This Act may be cited as the Aliens Act, 1905, and shall come into operation on the first day of January nineteen hundred and six.

(2) The Registration of Aliens Act, 1836 (*e*), is hereby repealed.

STATUTORY RULES AND ORDERS, 1905.

I.

ORDERS AND DIRECTIONS OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, DATED DECEMBER 19, 1905, UNDER THE ALIENS ACT, 1905 (5 EDW. 7, c. 13).

Returns of alien passengers (section 5).] Whereas section 5 (1) of the Aliens Act, 1905, provides that the master of any ship landing or embarking passengers at any port in the United Kingdom shall furnish to such person and in such manner as the Secretary of State directs a return giving such particulars with regard to any such passengers who are aliens as may be required for the time being by order of the Secretary of State :

I by this Order direct and require that—

- (1) (a) The master of every ship landing alien passengers at any port in the United Kingdom at which an immigration officer has been appointed shall, save as otherwise directed, before allowing any alien passenger to land, furnish to the immigration officer or boarding preventive officer of Customs the particulars mentioned in the Form of Return marked A in the Appendix to these Orders.
- (b) Where the use of the Form A 2 in the Appendix to these Orders is permitted by the Secretary of State, it shall be sufficient if that form is produced to the immigration officer by every alien passenger who is not exempt from inspection, and the master shall not be required to attach to the Return A the Immigrants Form A.
- (2) The master of every ship landing alien passengers at any port other than as aforesaid shall, immediately on arrival, furnish to the boarding preventive officer of Customs the particulars shown in Form B in the Appendix to these Orders.
- (3) The master of every ship carrying alien passengers out of the United Kingdom to places not in Europe or within the Mediterranean Sea shall furnish, at the same time as he delivers the passenger list for the ship, the particulars shown in Forms C and D respectively in the Appendix to these Orders concerning such of the passengers other than first-class passengers on board the ship as are aliens.
- (4) The master of every ship carrying alien passengers out of the United Kingdom to places in Europe or within the Mediterranean Sea shall furnish in such manner as may be directed from time to time the particulars shown in Form E in the Appendix to these Orders concerning such of the passengers on board the ship as are aliens.

Custody of immigrant conditionally disembarked.] Whereas section 7 (3) of the Aliens Act, 1905, provides that any immigrant who is conditionally disembarked shall be liable to be kept in custody in such manner as the Secretary of State directs :

I hereby direct that any immigrant who is conditionally disembarked for the purpose of inspection, appeal, or otherwise (*f*), shall

be in the custody of the master of the ship until leave to land has been given, or, if leave is withheld, until he finally leaves the United Kingdom.

Meaning of "immigrant ship."] Whereas section 8 (2) of the Aliens Act, 1905, provides that the expression "immigrant ship" means a ship which brings to the United Kingdom more than twenty alien steerage passengers who are to be landed in the United Kingdom whether at the same or different ports, or such number of those passengers as may be for the time being fixed by order of the Secretary of State :

I by this Order fix the number of those passengers at twelve.

Meaning of "steerage passenger."] Whereas section 8 (3) of the Aliens Act, 1905, provides that the expression "steerage passenger" includes all passengers except such persons as may be declared by the Secretary of State to be cabin passengers :

I by this Order declare all such passengers as are entitled to use the cabin, state rooms, or saloons where the accommodation is superior to that provided in any other part of the ship devoted to the carrying of passengers, to be cabin passengers for the purposes of the said Act.

H. J. GLADSTONE,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
19th December, 1905.

APPENDIX.

A. IMMIGRATION PORTS.

ALIENS ACT, 1905.

To be used for all ships landing alien passengers at any Port in the United Kingdom at which an Immigration Officer has been appointed under the Act.

A RETURN OF ALIEN PASSENGERS.

To be delivered by the master of the ship immediately on arrival, and before any alien passenger is allowed to land, to the Immigration Officer or to the boarding Preventive Officer of Customs.

I, the undersigned, Master of _____ bound from _____
to the Port (or Ports) of _____

do, in compliance with the provisions of the Aliens Act, 1905, hereby declare that this return and the forms attached contain a true and full account, to the best of my knowledge, of all alien passengers brought in my said ship to be landed at the Port of _____

Signed

Master.

Signature }
of Witness }

Immigration or Preventive Officer.

Date of Arrival _____

PART I.

Total number of Alien Cabin Passengers

PART II.

Total number of exempted Alien 2nd Class Passengers

PART III.

Total number of Alien Transmigrants

Particulars on Forms attached. _____

PART IV.

Total number of Alien Immigrants

Particulars on Forms attached. _____

NOTE.—If the master of a ship fails to make this return, or makes a false return, he is liable to a fine not exceeding £100, and if any alien refuses to give information required by the master of the ship for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.

DIRECTIONS FOR FILLING IN THIS RETURN.

PART I.—“Cabin Passengers” have been defined under the Act to mean “passengers entitled to use the cabins, state-rooms, or saloons, where the accommodation is superior to that provided in any other part of the ship devoted to the carriage of passengers”—that is, first-class passengers. All other alien passengers are under the Act “alien steerage passengers.”

PART II.—Applies only where exemption from inspection has been granted with regard to alien second-class passengers by order of the Secretary of State, and is to contain the total number of second-class passengers (other than transmigrants) so exempted. All transmigrants must be entered under Part III.

PART III.—“Transmigrants” means all alien passengers (other than first-class passengers) who have in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom. The required particulars of each transmigrant must appear on the transmigrant form (No. _____).

PART IV.—Is to contain the total number of all aliens other than those entered under Parts I., II., and III. The particulars of each immigrant must appear on the immigrant form (No. _____).

The transmigrant and immigrant forms (Nos. _____) must be attached to this return before it is delivered to the officer.

A IMMIGRATION PORTS.

ALIENS ACT, 1905.

TRANSMIGRANTS.

That is, alien passengers (other than first-class passengers) who have in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom

*Ship's Name**Bound to**Date of Sailing*

No.	Full name.* (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Nationality. (Country of which Citizen or Subject.)	Departure from United Kingdom.		Country or Port of destination outside United Kingdom.
				Port.	Steamship line.	
1						
2						
3						
4						
5						
6						
7						
8						
9						
0						
1						

*Every transmigrant, of whatever age, must be entered separately.

A. 2. IMMIGRATION PORTS.

ALIENS ACT, 1905.

To be used instead of Immigrant Form (No.) in such cases as may be permitted by the Secretary of State.

IMMIGRANTS.

This form is to be delivered to the Immigration Officer by every Alien Passenger except :—

- (a) First-class passengers
- (b) Transmigrants, that is, alien passengers who have in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom.
- (c) Passengers specially exempted by order of the Secretary of State.

The answers to the questions must be in English, and if any immigrant makes any false statement in this form he is liable to imprisonment for a term not exceeding three months with hard labour.

Full Name. (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Nationality. (Country of which Citizen or Subject.)	Occupation.	Whether proceeding to a destination outside United Kingdom.	Whether holding a return ticket between Foreign Country and United Kingdom.

A. IMMIGRATION PORTS.

ALIENS ACT, 1905.

IMMIGRANTS.

This form is required for every Alien Passenger except :—

- (a) First-class passengers.
- (b) Transmigrants, that is, alien passengers who have in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom.
- (c) Passengers specially exempted by order of the Secretary of State.

NOTE.—Alien seamen under actual contract to join a ship in British waters are required to answer only questions 1, 3, 6, and 7.

The answers to the questions must be in English, and if any immigrant makes any false statement in this form he is liable to imprisonment for a term not exceeding three months with hard labour.

Ship's Name

Bound to

Date of Sailing

This column to be
left blank.

1. Full name (Surname first.)	
2. Age and Sex	
3. Nationality (Country of which citizen or subject).	
4. Names and ages and sex of dependents accompanying (if any). [Dependents shall include wife and children under 21 years of age; all persons over 21 must fill in a separate form.]	
5. Last permanent place of abode (Address in full.)	
6. Proposed place of abode in United Kingdom (Address in full.) [Alien seamen under actual contract to join a ship in British waters must insert here the name of the ship they are about to join and the port at which she is lying.]	
7. Occupation	
8. What means have you in your possession?	
9. What prospects have you of decently supporting yourself and your dependents (if any) in the United Kingdom?	
10. Have you been convicted of any crime? If so, state nature of crime, date, and place of conviction, and sentence.	
11. Have you ever been expelled from the United Kingdom?	

I understand the above questions, and I have answered them truly.

Signature of Immigrant

If the immigrant is unable to write, the answers to the above questions must be filled in by an embarkation or other agent, or by one of the responsible officers of the ship, who must also attest the immigrant's mark in place of a signature.

Immigrant's Mark.

Signature, occupation, and address of witness to mark.

Date

B. NON-IMMIGRATION PORTS.

ALIENS ACT, 1905.

To be used for all ships landing alien passengers at any Port in the United Kingdom other than a Port at which an Immigration Officer has been appointed under the Act.

A RETURN OF ALIEN PASSENGERS.

To be delivered by the master of the ship immediately on arrival to the boarding Preventive Officer of Customs.

I, the undersigned, Master of _____ bound from _____
to the Port (or Ports) of _____ do, in compliance with the
provisions of the Aliens Act, 1905, hereby declare that this return contains
a full and true account, to the best of my knowledge, of all alien passengers
brought in my said ship to be landed at the Port of _____

Signed

Master.

Signature of Witness

Preventive Officer.

Date of Arrival

Total number of Alien Passengers
(In all parts of the ship.)

NOTE.—If the master of a ship fails to make this return, or makes a false return, he is liable to a fine not exceeding £100, and if any alien refuses to give information required by the master of the ship for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.

PARTICULARS OF ALIEN PASSENGERS.

No.	Full Name. (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Nationality. (Country of which Citizen or Subject)	Occupation.	Whether proceeding to a destination outside the United Kingdom.
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

C.

ALIENS ACT 1905.

To be used, subject to special exemption granted by the Secretary of State, for all Ships carrying Alien Transmigrants, as defined below, to destinations not in Europe or within the Mediterranean Sea, and to be delivered by the Master of the Ship to the Officer of Customs from whom a clearance is demanded.

Port of Embarkation.	Steamship Line.	Ship's Name.	Date of Clearance.

I hereby declare, in compliance with the provisions of the Aliens Act, 1905, that this Return contains a full and true account, to the best of my knowledge, of all Alien Transmigrants, as defined below, to be carried on my ship to the Port (or Ports) of

Signed

Master.

Date

A RETURN OF ALIEN TRANSMIGRANTS.

That is, alien passengers (other than first-class passengers) who arrived in the United Kingdom having in their possession prepaid through tickets, and in respect of whom security has been given that they will proceed to places outside the United Kingdom.

Total number of Alien Transmigrants,

NOTE.—If the Master fails to make this return, or makes a false return, he is liable to a penalty of £100, and if any alien refuses to give information required by the Master for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.

PARTICULARS.

No.	Full Name.* (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Arrival in United Kingdom.	
			Port.	Steamship Line.

* Every transmigrant, of whatever age, must be entered separately.

E.

ALIENS ACT, 1905.

To be used, subject to Special Exemption granted by the Secretary of State, for all Ships carrying Alien Passengers to places in Europe or within the Mediterranean Sea, and to be delivered in such manner as the Secretary of State may from time to time direct.

Port of Embarkation.	Steamship Line.	Ship's Name.	Date of Sailing.

I hereby declare, in compliance with the provisions of the Aliens Act, 1905, that this Return contains a full and true account, to the best of my knowledge, of all Alien Passengers to be carried on my ship to the Port (or Ports) of

Signed

Master.

Date

A RETURN OF ALIEN PASSENGERS.

Total number of Alien Passengers

NOTE.—If the Master fails to make this return, or makes a false return, he is liable to a penalty of £100, and if any alien refuses to give information required by the Master for the purpose of this return, or gives any false information for the purpose, he is liable to imprisonment for a term not exceeding three months with hard labour.

PARTICULARS.

No.	Full Name.* (Surname first.)	Sex. (All persons over 12 to be entered as M. (Male) or F. (Female); those under 12 as C. (Child).)	Occupation.	Nationality. (Country of which Citizen or Subject.)	Country of destination; and whether holding a Through Ticket from a Country outside the United Kingdom.

* Passengers using different classes of accommodation must be grouped together under separate heads, e.g., "First Class," "Second Class," "Third Class."

II.

RULES, DATED DECEMBER 19, 1905, MADE BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, UNDER THE ALIENS ACT, 1905 (5 EDW. 7, c. 13).

Immigration ports.] In pursuance of the provisions of the Aliens Act, 1905, I hereby make the following Rules, which shall have effect at the ports (hereinafter called immigration ports) of

Cardiff, Dover, Folkestone, Grangemouth, Grimsby, Harwich, Hull, Leith, Liverpool, London (including Queenborough), Newhaven, Southampton, and the Tyne ports (comprising Newcastle, North Shields and South Shields, which are to be deemed to constitute one port for the purpose of these Rules)

at which immigration officers and medical inspectors have been appointed and immigration boards have been established, and at such other ports as may from time to time be designated as immigration ports.

1. *Leave to land given.*] Where leave to land is given (otherwise than after an appeal to the immigration board), it shall be given by the immigration officer to the immigrant, and may be given verbally.

2. *Opinion of medical inspector.*] Where the medical inspector is of opinion that an alien is an undesirable immigrant within the meaning of section 1 (3) (b) of the Aliens Act, 1905, he shall state his opinion in the Form No. 1 in the Appendix to these Rules, and deliver the Form to the immigration officer.

3. *Leave to land withheld.*] Where leave to land is withheld by the immigration officer, notice thereof and of the grounds of refusal and of the right of appeal against the refusal shall be given by him to the master of the ship, and to the immigrant, and shall be in the Form No. 2 in the Appendix to these Rules.

4. *Notice of appeal to immigration officer.*] Where an immigrant or other person entitled to appeal against the refusal of leave to land, desires to appeal, he shall, if practicable, give notice to the immigration officer before he leaves the ship or other place of inspection, and such notice may be given verbally; provided that the master, owner, or agent of the ship may (and shall if required by an immigrant) within 24 hours after the refusal of leave to land give written notice of appeal either by delivery to the immigration officer a notice in the Form No. 3 in the Appendix to these Rules, or by sending a similar notice to the nearest Custom House or Customs Watchhouse.

5. *Notice of appeal to immigration board clerk.*] Where the immigration officer receives notice of appeal from an immigrant or other person entitled to appeal he shall forthwith send notice to the immigration board clerk. Such notice may be in the Form No. 4 in the Appendix to these Rules.

6. *Procedure with regard to transmigrants.*] For the purpose of enabling the immigration officer to satisfy himself that any passenger included in a return of transmigrants in respect of any immigrant ship is an alien passenger within the meaning of section 8 (1) (b) of the Aliens Act, 1905, no passenger so included shall, except where the Secretary of State has sanctioned conditional disembarkation for the purpose, be allowed to leave the ship before the immigration officer has satisfied himself of the accuracy of that return.

7. *Conditional disembarkation.*] Conditional disembarkation of immigrants may be sanctioned by the Secretary of State when he is satisfied that proper provision has been made in a place and under conditions approved by him for the accommodation, maintenance, control, and safe custody of the immigrants so disembarked.

8. *Security for conditional disembarkation.*] Where security is required by the Secretary of State to be given for the conditional disembarkation of immigrants it shall be by bond, and shall be given by the master of the ship unless in any case the owner of a ship has given, to the satisfaction of the Secretary of State, security by bond covering all the ships owned by him arriving at the port or ports where conditional disembarkation has been sanctioned.

9. *Conditional disembarkation to a hospital.*] Where an immigrant should, in the opinion of the port medical officer of health or medical inspector, be removed from an immigrant ship for treatment or observation at a hospital he shall be conditionally disembarked for the purpose, and shall be liable, before release from the hospital, to inspection for the purposes of the Act.

10. *Conditional disembarkation for appeal.*] Where an immigrant, or the master, owner, or agent of a ship, appeals against a refusal of leave to land, the immigrant shall, unless otherwise ordered, be disembarked for the purpose of being brought before an immigration board, and shall be dealt with as conditionally disembarked until leave to land has been given or he has been re-embarked for the purpose of leaving the United Kingdom.

11. *Immigration board clerk.*] For every immigration port there shall be an immigration board clerk.

12. *Assistants to officers.*] The medical inspector and the immigration board clerk, when unable personally to perform their duties under the Act or these Rules, may Act through a duly qualified assistant under such conditions as the Secretary of State may from time to time impose.

13. *Duties of clerk.*] The duties of the immigration board clerk shall be to act as clerk to the immigration board, and in particular—

- (a) To keep a list of the persons nominated by the Secretary of State for service on the immigration board.
- (b) To summon boards for the purpose of considering any appeals of which he receives notice from the immigration officer.
- (c) To attend the meetings of the boards.

- (d) To take minutes of the proceedings of the boards, and to furnish such information or returns as the Secretary of State may require.
- (e) In the case of any reference to the Secretary of State under section 8 (4) of the Aliens Act, 1905, to furnish a report on the question in dispute, accompanied by any statements in writing made by any party to the dispute.

14. *Summons to immigration board.*] When a notice of appeal has been received by the immigration board clerk he shall, unless a board has already been summoned by which the appeal can be considered, forthwith summon a board, to be held, if practicable, not more than 24 hours after receipt of the notice. In calculating the 24 hours, Sundays and Bank Holidays shall be excluded.

The notice summoning a board may be in the Form No. 5 in the Appendix to these Rules.

15. *Method of summoning members of board.*] The clerk shall, so far as practicable, summon every member on the list in turn : provided that, where possible, a magistrate shall always be a member of the board.

16. *Place of meeting of board.*] The boards shall meet at the places appointed by the Secretary of State from time to time for such meetings.

17. *Chairman of board.*] The chairman of a board shall, where any magistrate is a member of the board, be a magistrate ; and, subject thereto, the members shall choose the chairman.

18. *Opinion of majority to prevail.*] In the event of any disagreement between the members of a board the opinion of the majority shall prevail.

19. *Adjournment.*] Where a board is of opinion that it is desirable to make further inquiries before deciding a case, it shall have power to adjourn the hearing.

20. *Notice of meeting to immigration officer and medical inspector.*] Notice of the time and place of every meeting of a board shall be given to the immigration officer by the clerk, and, if any immigrant whose case is to be heard by a board has been rejected on medical grounds, also to the medical inspector. The notices may be respectively in Forms Nos. 6 and 7 in the Appendix to these Rules.

21. *Notice of meeting of board to appellant.*] When the immigration officer receives notice of the meeting of a board he shall forthwith communicate the time and place thereof to the immigrant concerned, and to any other person who may be an appellant.

22. *Attendance at board of immigration officer and medical inspector.*] The immigration officer shall attend the meetings of the boards, and

the medical inspector, when the case of any immigrant who has been rejected on medical grounds is to be considered, shall also attend unless he receives notice dispensing with his attendance.

23. *Procedure of board.*] The immigrant (and the master, owner, or agent of the ship if an appellant) the immigration officer and the medical inspector, if present, shall be entitled to be heard, and the board may put such questions to the alien or other appellant, and make such enquiries, if any, as they think fit. No other person shall be entitled to be heard without special leave from the board. Subject as aforesaid, the procedure of the board shall be such as the board may determine.

24. *Leave to land withheld by board.*] Where a board confirms the refusal of leave to land, the clerk shall countersign the copy of the original refusal of leave to land retained by the immigration officer, and shall forthwith give notice of the decision of the board to the master of the ship and to the owner or agent, if an appellant. The notice shall be in the Form No. 8 in the Appendix to these Rules.

25. *Leave to land given by board.*] Where a board gives leave to land, the clerk shall mark with the word "cancelled" and sign the copy of the immigration officer's refusal of leave to land retained by the immigration officer, and shall forthwith give notice of the decision of the board to the master of the ship and to the owner or agent, if an appellant. The notice shall be in the Form No. 9 in the Appendix to these Rules.

H. J. GLADSTONE,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
19th December, 1905.

APPENDIX.

FORM No 1.

TO THE IMMIGRATION OFFICER.

ALIENS ACT, 1905.

OPINION OF MEDICAL INSPECTOR.

I am of opinion that the Alien Immigrant named _____

brought to the United Kingdom in the ship _____

is a lunatic or idiot ;

or

is suffering from _____

and appears likely on that account to become a charge upon the rates, or otherwise a detriment to the public.

Signature of Medical Inspector, and Date.

ALIENS ACT, 1905.

OPINION OF MEDICAL INSPECTOR.

I am of opinion that the Alien Immigrant named _____

brought to the United Kingdom in the ship _____

is a lunatic or idiot ;

or

is suffering from _____

and appears likely on that account to become a charge upon the rates, or otherwise a detriment to the public.

Signature of Medical Inspector, and Date.

FORM NO. 2.

To be retained by Immigration Officer.

ALIENS ACT, 1905.

REFUSAL OF LEAVE TO LAND.

Leave to land has been withheld in the case of the Alien Immigrant named _____

brought to the United Kingdom in the ship _____ on the ground that _____

_____ { he has failed to show that he is a lunatic or idiot ; or

_____ { he is suffering from a mental defect of such a nature as to render him incapable of earning his livelihood ; or

_____ { he has been sentenced to imprisonment for the whole or part of a term exceeding three months for the commission of a crime ; or

_____ { an Expulsion Order has been made against him.

His dependents who have also been refused leave to land are : _____

Signature (or Stamp) of Immigration Officer, and Date.

Notice is further given that the Master, Owner, or Agent of the Ship and the Immigrant have the right of appeal to the Immigration Board against this refusal.

If notice of appeal is not given to the Immigration Officer before he leaves, it must be sent by the Master, Owner, or Agent within 24 hours to the nearest Custom House or Customs Watch-house.

To the Master.

ALIENS ACT, 1905.

REFUSAL OF LEAVE TO LAND.

Notice is hereby given that leave to land has been withheld in the case of the Alien Immigrant named _____

brought to the United Kingdom in the ship _____ on the ground that _____

_____ { he has failed to show that he is a lunatic or idiot ; or

_____ { he is suffering from a mental defect of such a nature as to render him incapable of earning his livelihood ; or

_____ { he has been sentenced to imprisonment for the whole or part of a term exceeding three months for the commission of a crime ; or

_____ { an Expulsion Order has been made against him.

His dependents who have also been refused leave to land are : _____

Signature (or Stamp) of Immigration Officer, and Date.

Notice is further given that the Master, Owner, or Agent of the Ship and the Immigrant have the right of appeal to the Immigration Board against this refusal.

If notice of appeal is not given to the Immigration Officer before he leaves, it must be sent by the Master, Owner, or Agent within 24 hours to the nearest Custom House or Customs Watch-house.

To the Immigrant.

ALIENS ACT, 1905.

REFUSAL OF LEAVE TO LAND.

I hereby withhold leave to land from you, an Alien Immigrant named _____

brought to the United Kingdom in the ship _____ on the ground that _____

_____ { you have failed to show that you are a lunatic or idiot ; or

_____ { you are suffering from a mental defect of such a nature as to render you incapable of earning your livelihood ; or

_____ { you have been sentenced to imprisonment for the whole or part of a term exceeding three months for the commission of a crime ; or

_____ { an Expulsion Order has been made against you.

Your dependents who have also been refused leave to land are : _____

Signature (or Stamp) of Immigration Officer, and Date.

Notice is hereby given that you have the right of appeal to the Immigration Board against this refusal.

Notice of appeal should be given to the Immigration Officer before he leaves. Failing that, it may be sent, through the Master of the ship, within 24 hours.

FORM No. 3.

NOTICE OF APPEAL.

ALIENS ACT, 1905.

To the Immigration Officer.

Port of _____

Date _____

I _____ the master, or the owner, or the agent of the
ship _____ hereby give notice that I [or the immigrant (or
immigrants) hereinafter named] appeal against your refusal of leave to
land in respect of the following Alien Immigrants:—

Name.

Ground of Appeal.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Signed _____

Master, Owner, or Agent.

FORM NO. 4.

NOTICE OF APPEAL TO
IMMIGRATION BOARD CLERK.

A. (TELEGRAM.)

To _____
Immigration Board Clerk.

Appeal notified at _____ o'clock to-day for _____
Aliens brought in ship _____ Medical cases number _____

Immigration Officer.

B. (LETTER.)

ALIENS ACT, 1905.

Port of _____

Date _____

SIR,

I HEREBY give you notice that leave to land has been withheld in the case of the _____ Alien Immigrants named in the Schedule hereto, on the grounds shown therein ; and that notice of Appeal has been given, as also shown therein at _____ o'clock to-day.

I am,

Sir,

Your obedient Servant,

Immigration Officer.

FORM No. 5.

SUMMONS TOIMMIGRATION BOARD.

A. (TELEGRAM.)

Attendance requested at _____ at _____
o'clock, _____ day, to hear appeals from _____ Alien
Immigrants. Please telegraph consent or otherwise.

Clerk.

B. (LETTER.)

ALIENS ACT, 1905.

Port of _____

Date _____

SIR,

I HEREBY give you notice that there are appeals to be heard in respect
of _____ Alien Immigrants ; and to request that you will attend
a meeting of the Immigration Board at _____ at _____
o'clock, _____ day (_____ th instant).

I have to request that you will inform me by telegram whether you can
attend.

I am, Sir,

Your obedient Servant,

Immigration Board Clerk.

FORM No. 6.

NOTICE OF BOARD MEETING
TO IMMIGRATION OFFICER.

A. (TELEGRAM.)

Immigration Board will meet for appeals from ship _____
at _____ at _____ o'clock, _____ day.

Notify Appellants.

Clerk.

B. (LETTER.)

ALIENS ACT, 1905.

Port of _____

Date _____

SIR,

WITH reference to your communication of _____ respecting _____
appeals from the ship _____ against your refusal of leave to land,
I have to inform you that an Immigration Board has been summoned and
will meet to hear the appeals at _____ at _____ o'clock,
_____ day (_____ th inst.) and I have to request that you will be good
enough to notify the appellants accordingly.

I am,

Yours faithfully,

Clerk.

FORM NO. 7.

NOTICE OF BOARD MEETING
TO MEDICAL INSPECTOR.

A. (TELEGRAM.)

Immigration Board will meet for appeals from ship _____ against
 refusals on medical grounds at _____ at _____ o'clock, _____ day.

 Clerk.

B. (LETTER.)

ALIENS ACT, 1905.

 Port of _____

Date _____

SIR,

I HAVE to give you notice that appeals from the refusal of leave to land
 (which was based on your opinion as Medical Inspector) in the following
 cases from the ship _____ will be heard by the Immigration
 Board at _____ at _____ o'clock, _____ day (_____ th inst.).

I am,

Yours faithfully,

 Clerk.

FORM No. 8.

REFUSAL OF LEAVE TO LAND

BY IMMIGRATION BOARD.

ALIENS ACT, 1905.

*To the Master [or Owner or Agent] of the Ship*_____

Port of _____

Date _____

NOTICE is hereby given that the Immigration Board has withheld leave to
land in respect of the _____ Alien Immigrants brought to the
United Kingdom in the ship _____ who are named below :—

Clerk.

FORM NO. 9

LEAVE TO LAND BY
IMMIGRATION BOARD.

ALIENS ACT, 1905

To the Master [or Owner or Agent] of the Ship _____

Port of _____

Date _____

NOTICE is hereby given that the Immigration Board has given leave to land in the case of the _____ Alien Immigrants (to whom leave was withheld by the Immigration Officer) brought to United Kingdom in the ship _____ who are named below :—

Clerk.

III.

THE SUMMARY JURISDICTION (ALIENS) RULES, 1906, DATED
JANUARY 3, 1906.

1. *Proceedings to expel pauper, etc., aliens.*] Proceedings under section 3 (1) (b) of the Aliens Act, 1905, (relating to the expulsion of pauper aliens, and aliens convicted abroad of extradition crimes), shall be commenced by complaint, and the provisions of the Summary Jurisdiction Acts with reference to proceedings on complaint shall, in so far as applicable, apply accordingly.

2. *Forms.*] The forms in the Schedule hereto, or forms to the like effect, may be used with such variations as circumstances may require for the purposes of the Aliens Act, 1905.

3. *Short title.*] These Rules may be cited as the Summary Jurisdiction (Aliens) Rules, 1906.

Dated the 3rd day of January, 1906.

REID, C.

SCHEDULE.

Aliens Act, 1905.

Section 3 (1) (b).

Complaint.

In the [county of petty sessional division of].
The day of one thousand nine hundred and .

The complaint of C. D., who states that A. B., an alien, who last entered the United Kingdom within twelve months before these proceedings were taken

either has within three months from the present date been in receipt of such parochial relief as disqualifies a person for the parliamentary franchise [or been found wandering without ostensible means of subsistence] [or been living under insanitary conditions due to overcrowding]

or has entered the United Kingdom after the 11th day of August, 1905, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870, viz.,

Taken before me,

(L.S.)

Justice of the peace for the
[county] aforesaid.

Aliens Act, 1905.

Section 3 (1) (a).

Certificate of Conviction and Recommendation for Expulsion.

In the [county of petty sessional division of].

Before the court of [summary jurisdiction] sitting at .

The day of one thousand nine hundred and .

I [or we] hereby certify

That A. B., to whom the particulars shown in the annexed Schedule relate, having been found by the court to be an alien, was this day convicted of the offence shown in the said Schedule, being an offence within the

meaning of section 3 (1) (a) of the Aliens Act, 1905 ; [and was committed to one of His Majesty's prisons, to be kept there for the space of] :

And that the court recommend that an Expulsion Order should be made in the case of the said A. B., in addition to the said sentence [*or* in lieu of sentence].

Justice of the peace for the	(L.S.)
[county] aforesaid.	
Justice of the peace for the	(L.S.)
[county] aforesaid.	

SCHEDULE.

Name .
 Nationality .
 Age .
 Dependents (if any) .
 Offence .
 Sentence .
 Prison to which committed .
 Police district in which offence was committed.

Aliens Act, 1905.

Section 3 (1) (b).

Certificate with view to Expulsion.

In the [county of petty sessional division of].
 Before the court of summary jurisdiction sitting at .
 The day of one thousand nine hundred and .

C. D. having made a complaint that A. B., an alien, to whom the particulars shown in the Schedule hereto relate, last entered the United Kingdom within twelve months before the proceedings were taken, and *either* that he has within three months from the time at which proceedings were commenced been in receipt of such parochial relief as disqualifies a person for the parliamentary franchise [*or* been found wandering without ostensible means of subsistence] [*or* been living under insanitary conditions due to overcrowding]

or that he has entered the United Kingdom after the 11th day of August, 1905, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870, viz.,

On hearing the said complaint I [*or* We] being satisfied that the said A. B. is an alien, hereby certify that the said A. B. last entered the United Kingdom within twelve months before these proceedings were taken, and that he [*here insert the clause of the complaint of which the court was satisfied*].

Justice of the peace for the	(L.S.)
[county] aforesaid.	
Justice of the peace for the	(L.S.)
[county] aforesaid.	

DIRECTIONS UNDER THE ALIENS ACT, 1905. 217

SCHEDULE.

Name .
Nationality .
Age .
Dependents (if any) .
Date of last entry into United Kingdom .
Facts of complaint certified .
Prison to which committed .
Police district in which proceedings taken .

IV.

DIRECTIONS, DATED DECEMBER 4, 1905, OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, UNDER THE ALIENS ACT, 1905 (5 EDW. 7, C. 13, SS. 3 AND 7 (3)), AS TO CUSTODY IN CONNECTION WITH EXPULSION ORDERS.

In pursuance of the provisions of section 7 (3) of the Aliens Act, 1905, I hereby direct, with regard to the custody of an alien in respect of whom a certificate has been given by a court with a view to his expulsion from the United Kingdom, that:

1. (1) Where a court gives a certificate with a view to the expulsion of an alien, either under section 3 (1) (b) of the Aliens Act, 1905, or under section 3 (1) (a) thereof, without imposing a sentence of imprisonment, the alien shall, unless the court otherwise directs and admits him to bail, stand committed to the prison to which the court ordinarily commits prisoners until the orders of the Secretary of State with respect to his expulsion are received.
(2) Where a court gives a certificate under section (3)(1)(a) and imposes a term of imprisonment not exceeding one month, the alien shall, if the Secretary of State has not sooner decided upon his case, be detained in prison until the orders of the Secretary of State with respect to his expulsion have been received.
2. In any such case as aforesaid, a copy of the certificate, signed by the clerk or other proper officer of the court giving the certificate, shall be sufficient authority to the police to take the alien into custody and convey him to prison, and to the governor of the prison to receive and detain him until the orders of the Secretary of State with respect to his expulsion are received.
3. Where any such certificate is given by a court, the certificate shall be forwarded forthwith to the Secretary of State, and a copy of the certificate, signed by the clerk or other proper officer of the court, shall be given to the officer charged with the duty of conveying the alien to prison.

A. AKERS-DOUGLAS,

One of His Majesty's Principal
Secretaries of State.

Whitehall,
4th December, 1905.

V.

FORMS OF BONDS TO BE GIVEN AS SECURITY UNDER THE
ALIENS ACT.

*(From the Appendix to the Memorandum on the proposed
Administration of the Act, dated December 9, 1905.)*

Form No. 1.

KNOW ALL MEN by these presents, that we the owner of certain ships known as the Line, and are held and firmly bound unto our Sovereign Lord Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, in the sum of pounds to be paid to our said Lord the King, his heirs or successors, for which payment well and truly to be made, we bind ourselves, jointly and severally, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals.

Dated this day of in the year of our Lord nineteen hundred and .

Whereas by the Aliens Act, 1905, restrictions are placed upon the landing in the United Kingdom of immigrants as defined by the said Act. And whereas the expression "immigrants" in the said Act does not include passengers holding prepaid through tickets to some destination out of the United Kingdom if the master or owner of the ship by which they are brought to the United Kingdom or by which they are to be taken away from the United Kingdom gives security to the satisfaction of the Secretary of State that except for the purposes of transit or under other circumstances approved by the Secretary of State they will not remain in the United Kingdom or re-enter the United Kingdom after having been rejected in another country and that they will be properly maintained and controlled during their transit. And whereas it is intended that alien steerage passengers as defined by the said Act arriving at ports in the United Kingdom and holding prepaid through tickets to places outside the United Kingdom shall be taken away from the United Kingdom in the ships owned by the above bounden .

NOW THE CONDITION of the above-written bond or obligation is such that if on the arrival at any port in the United Kingdom of any alien steerage passengers as defined by the said Act holding prepaid through tickets to some destination out of the United Kingdom, the above bounden shall give to the Secretary of State, or such person as he shall appoint at that port, a notice in the form prescribed by the Secretary of State containing the particulars of such of the passengers so landed there as are to be taken away from the United Kingdom in any ship or ships owned by the above bounden . And if every passenger referred to in the said notice shall be taken away from the United Kingdom with all due diligence and despatch in a ship owned by the above bounden and shall not except for the purposes of transit or under such circumstances as may for the time being be approved by the Secretary of State remain in the United Kingdom or if rejected in another country re-enter the United Kingdom. And if every passenger referred to in the said notice and landed in the United Kingdom for any purpose as aforesaid shall during transit through the United Kingdom be properly maintained and controlled. And if the above bounden shall within the time prescribed by the Secretary of State give to the Secretary of

State or such person as he shall appoint at the port from which the passengers should proceed under the through tickets a return in such form as the Secretary of State shall prescribe specifying the name and such further particulars as may be thereby required of any and every passenger who may not be permitted to proceed to the destination for which his or her ticket was issued or who having proceeded to that destination is not permitted to land there. And if all rules made by the Secretary of State with respect to the landing, maintaining and controlling of such passengers as aforesaid shall be duly observed and complied with by them and by the masters of the ships respectively in which they were brought to and are to be taken away from the United Kingdom. And if in the event of any such passenger referred to in the notice so delivered as aforesaid by the above bounden remaining in the United Kingdom except for the purposes of transit or under other circumstances approved by the Secretary of State or re-entering the United Kingdom except for the purposes of transit after having been rejected in another country or not being properly maintained and controlled during his transit the above bounden shall on demand pay to the Secretary of State or such person as he may appoint to receive the same a sum not exceeding twenty pounds in respect to each such passenger so remaining re-entering or not being properly maintained and controlled. Then the above-written bond or obligation shall be void, or otherwise shall be and remain in full force and effect.

Signed sealed and delivered by the above bounden .

In the presence of .

Aliens Act, 1905, s. 8 (b). *Bond in respect of through passengers.*

Form No. 2.

KNOW ALL MEN by these presents that we are held and firmly bound unto our Sovereign Lord Edward the Seventh by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, in the sum of £ to be paid to our said Lord the King, his heirs or successors, for which payment well and truly to be made we bind ourselves and each of us jointly and severally our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals.

Dated this day of , in the year of our Lord, 190 .

Whereas by the Aliens Act, 1905, restrictions are placed upon the landing in the United Kingdom of immigrants as defined by the said Act, and whereas the Secretary of State is empowered subject to such conditions as he may by order impose to exempt any immigrant ships from the said restrictions if security is given to his satisfaction that undesirable immigrants will not be landed in the United Kingdom from those ships except for the purpose of transit, and whereas the Secretary of State has by Order dated the day of 190 , and subject to the conditions therein expressed exempted from the provisions of the said section until further order all such ships under the management and control of as may enter the port or ports of in the United Kingdom from the port or ports of and be immigrant ships within the meaning of the said Act upon conditions of this bond being entered into.

NOW THE CONDITION of the above-written bond or obligation is such that if no undesirable immigrant brought by any of the said ships shall be landed in the United Kingdom from among the passengers who by

reference to the terms of the said Order are not subject to the provisions of section 1 of the said Act otherwise than solely for the purpose of transit, and if every undesirable immigrant so landed shall, with all due diligence and despatch, proceed to some destination outside the United Kingdom, and if every return required to be furnished as a condition for the said Order shall be duly furnished and all rules made by the Secretary of State with respect to undesirable immigrants shall be duly observed and complied with, and if in the event of any undesirable immigrant being so landed in the United Kingdom otherwise than solely for the purpose of transit, or after being so landed remaining in the United Kingdom the above bounden shall on demand pay to the Secretary of State, or to such person as he may appoint to receive the same, a sum not exceeding £20 in respect of each such immigrant so landed, then the above-written bond or obligation shall be void, or otherwise shall be and remain in full force and effect.

Signed sealed and delivered by the above bounden .

In the presence of .

Aliens Act, 1905, s. 8 (1) (b). *Bond for exemption from inspection.*

Form No. 3.

KNOW ALL MEN by these presents, that we master of the ship
and are held and firmly bound unto our Sovereign Lord Edward
the Seventh, by the Grace of God of the United Kingdom of Great
Britain and Ireland, and of the British Dominions beyond the Seas,
King, Defender of the Faith, in the sum of pounds to be paid to
our said Lord the King, his heirs or successors, for which payment
well and truly to be made, we bind ourselves, jointly and severally
our and each of our heirs, executors, and administrators firmly by
these presents.

Sealed with our seals.

Dated this day of in the year of our Lord nineteen
hundred and .

Whereas by the Aliens Act, 1905, restrictions are placed upon the landing in the United Kingdom of immigrants as defined by the said Act. And whereas the Secretary of State is empowered by the said Act to make rules with respect to the conditional disembarkation of immigrants for the purpose of inspection appeals or otherwise and any immigrant brought to the United Kingdom in any immigrant ship may upon security being given by the master of the ship be conditionally disembarked, and upon so disembarking is not to be deemed to have landed in the United Kingdom. And whereas the ship of which the above-bounden is master is an immigrant-ship as defined by the said Act.

NOW THE CONDITION of the above-written bond or obligation is such that if no immigrant brought to the United Kingdom by the said ship shall be disembarked therefrom in the United Kingdom except solely for the purpose of inspection by the immigration officer in company with a medical inspector or for the purpose of an appeal to the immigration board of the port at which the immigrant is disembarked or for some other purpose permitted by the rules made by the Secretary of State for the time being in force, and if the above bounden and every immigrant so disembarked shall observe and comply with all orders of the immigration

officer at the port or ports at which the immigrant is disembarked and all rules made by the Secretary of State with respect to the disembarkation of immigrants for the purposes aforesaid. And if every immigrant so conditionally disembarked and to whom leave to land is withheld shall return to the ship and be again received thereon immediately after the purpose of the conditional disembarkation has been accomplished, then the above-written bond or obligation shall be void or otherwise shall be and remain in full force and effect.

Signed sealed and delivered by the above-bounden .

In the presence of .

Aliens Act, 1905, s. 2 (2). *Bond for conditional disembarkation.*

MEMORANDUM ON THE ALIENS ACT, 1905.

1. In the following Memorandum no attempt has been made to indicate the particular arrangements for administering the Act at the various ports, *e.g.*, the Immigration Officers and Medical Inspectors appointed, the conditions of conditional disembarkation, place for hearing appeals, etc. All necessary information is available at the ports themselves on application to the Customs staff, who are also prepared to supply the prescribed forms of returns, etc.

Definition of "Immigrant Ship."

2. The Secretary of State has decided in pursuance of the provisions of section 8 (2) of the Act to fix the number 12 in place of the number 20 mentioned therein. The effect of this is that any ship bringing more than 12 alien steerage passengers to be landed in the United Kingdom, whether at the same or different ports, is an "immigrant ship" and consequently subject to the provisions of the Act with regard to the inspection of those passengers.

3. Further, no ship bringing more than 12* alien steerage passengers may land any of them at any port which is not an immigration port as hereafter defined.

4. The expression "alien steerage passenger" includes, as will be seen from the next paragraph, all alien passengers other than first-class passengers.

Definition of "Cabin Passengers."

5. In pursuance of the provisions of section 8 (3) of the Act, the Secretary of State has declared all such passengers as are entitled to use the cabin, state rooms, or saloons, where the accommodation is superior to that provided in any other part of the ship devoted to the carriage of passengers, to be cabin passengers for the purposes of the Act. The result of this decision is that, where there is more than one class of accommodation on board a ship, all alien passengers except those entitled to use the first-class accommodation (or, in short, "first-class" passengers) are to be reckoned for the purposes of the Act as alien steerage passengers; and, where there is only one class of accommodation on board, all the alien passengers are to be so reckoned.

6. The position of second-class passengers, in certain cases, is dealt with in the paragraph headed "Exemption from Inspection."

Meaning of "Immigration Port."

7. Under section 6 (1) of the Act, the Secretary of State is required to appoint at such ports as he thinks necessary for the time being Immigration Officers and Medical Inspectors. The ports

* See Errata facing p. 1.

at which these appointments are made are referred to in this memorandum and in the rules and orders under the Act as "immigration ports." The ports of Cardiff, Dover, Folkestone, Grangemouth, Grimsby, Harwich, Hull, Leith, Liverpool, London (which includes Queenborough), Newhaven, Southampton and the Tyne Ports (comprising Newcastle, North Shields and South Shields, which will, in effect, be treated as one port) constitute, for the present, the immigration ports, and, as already indicated, ships bringing more than 12 alien steerage passengers may not land any of them except at one of these ports.

8. All other ports are referred to in this memorandum as non-immigration ports.

Meaning of "Transmigrants."

9. In this memorandum the expression "transmigrants" means (in the words of section 8 (1) (b) of the Act) alien passengers, other than first-class passengers, who hold prepaid through tickets to some destination outside the United Kingdom, and in respect of whom security has been given that they will proceed to places outside the United Kingdom.

10. The security must be given by bond, in the Form No. 1 in Appendix II., and the Secretary of State is prepared to consider applications from companies, bringing or taking away transmigrants, who desire to enter into the bond.

Returns.

11. Under section 5 (1) of the Act, the Secretary of State has power to require in the case of any ship landing or embarking passengers at any port in the United Kingdom a return with respect to any such passengers who are aliens. This return is to contain such particulars as may be for the time being required, and is to be furnished by such person and in such manner as the Secretary of State directs.

12. The returns which it has at present been decided to require may be divided into the following heads :

A.—LANDING.

(a) Immigration Ports.

13. The prescribed form of return is set out in Appendix I. It consists of an outer sheet (A) entitled "A Return of Alien Passengers," with two forms, also marked (A), entitled respectively "Transmigrants" and "Immigrants." This return is to be used for all ships (whether or not immigrant ships) landing alien passengers at any immigration port, and is to be delivered by the master of the ship, immediately on arrival and before any alien passenger is allowed to land, to the Immigration Officer in the case of an immigrant ship, or, in the case of any other ship, to the boarding Preventive Officer of Customs. For the bearing of Parts II.

and III. of the return and for the application of Part IV. to alien seamen, reference may be made to the paragraphs of this memorandum headed "Exemption from Inspection," "Transmigrants," and "Alien Seamen."

14. In certain cases where the Secretary of State permits it, the Form A 2 may be used instead of the Immigrant Form A: and in such cases it will be sufficient if the Form A 2 is produced to the Immigration Officer by every alien passenger who is not exempt from inspection, and the master will not be required to attach the Immigrant Form A to the Return A. Permission to use Form A 2 has been granted in respect of the cross-channel traffic at the ports of Dover, Folkestone, Harwich, Newhaven, and Southampton, and the Form must be produced by every non-exempted passenger landed in the United Kingdom from any of the ships engaged in that traffic.

(b) Non-Immigration Ports.

15. The prescribed form of return (B) in Appendix I. is to be used for all ships landing alien passengers at any non-immigration port, and is to be delivered by the master of the ship, immediately on arrival, to the boarding Preventive Officer of Customs.

B.—EMBARKING.

(a) Transmigrants.

16. The form of return marked (C) in Appendix I. has been prescribed for all ships carrying alien transmigrants out of the United Kingdom to destinations not in Europe or within the Mediterranean Sea. This return is to be delivered in the same way and at the same time as the Board of Trade passenger list: Provided that where any shipping company is prepared to add to the passenger list such of the information required by Form C as is not already shown on that list, the Secretary of State is willing to exempt that company from furnishing Form C separately.

(b) Emigrants.

17. The form of return marked (D) in Appendix I. has been prescribed for all ships, not subject to special exemption, carrying alien emigrants, other than first-class passengers, out of the United Kingdom to destinations not in Europe or within the Mediterranean Sea. This return is to be delivered in the same way and at the same time as the Board of Trade passenger list: Provided that where any shipping company is prepared to add to the passenger list such of the information required by Form D as is not already shown on that list, or to deliver with that list the required information on a separate slip for every alien emigrant, the Secretary of State is willing to exempt that company from furnishing Form D separately.

18. Although the forms of returns given in Appendix I. have been prescribed, shipping companies are at liberty to print their

own forms, provided that the required information is clearly given and that the returns so printed are identical in size and general arrangement with the prescribed forms.

19. The Secretary of State is desirous of obtaining statistics of the alien passenger traffic from the United Kingdom to places in Europe and within the Mediterranean Sea, and with that object he has prescribed Form E in Appendix I. for all ships engaged in that traffic. The manner in which the required information shall be furnished will form the subject of special directions in every case after communication with the companies concerned.

Exemption from Inspection.

20. By section 1 (4) of the Act, the Secretary of State is empowered in certain circumstances to exempt, subject to such conditions as he thinks fit to impose, any immigrant ships from the provisions of this section, *i.e.*, in regard to inspection and leave to land. It is open to any shipping company which is prepared to assure the Secretary of State that undesirable immigrants will not be landed (except for the purpose of transit) from their immigrant ships, to apply for exemption, and to offer security. Total exemption will only be granted in special circumstances and will be subject to an obligation to make special returns; but, as at present advised, the Secretary of State is prepared to consider applications for exemption which will have the effect of relieving from inspection by the Immigration Officer and Medical Inspector alien second-class passengers. It will be a condition of this exemption that (1) alien passengers securing second-class accommodation merely by paying an excess fare on board ship, and (2) alien passengers travelling third-class by railway but accommodated by arrangement in the second-class on board ship, as well as (3) alien third-class or deck or steerage passengers, shall remain subject to inspection.

21. The granting of any exemption will be subject to security being given by bond in the Form No. 2 or No. 3 in Appendix II. as the case may be.

Alien Seamen.

22. It will be seen from the heading of the Immigrant Form (A) that alien seamen under actual contract to join a ship in British waters are required to answer only some of the questions set out in that form, the presumption being that such seamen may be regarded as coming within the meaning of section 8 (1) (a) of the Act. If satisfactory evidence of such contract is produced to the Immigration Officer, either by an individual seaman or by some responsible person in charge of or on behalf of a crew, any such seamen will be deemed, in pursuance of the enactment quoted, not to be an immigrant, and will not be subject to further inspection. Seamen landing with the object merely of seeking engagements will be subject to inspection as ordinary immigrants. In the case provided for by sections 191 and 192 of the Merchant Shipping Act, 1894, namely, distressed seamen returned to the United Kingdom from abroad under the orders of a British Consul or other competent British authority, leave to land will be given.

Operation of the Act.

23. The normal procedure under the Act, on the arrival of an immigrant ship, may be stated somewhat as follows :—The master of the ship will produce the prescribed return of alien passengers and will sign it in the presence of the Immigration Officer, who will board the ship at the earliest opportunity. The alien cabin passengers and the exempted alien second-class passengers, if any, will then be free to land.

24. In any case where alien transmigrants are carried it will probably be found convenient to deal with them next, and the only restriction to which they will be subject will be that the Immigration Officer must have proper opportunity of verifying the number of the transmigrants and their possession of through tickets. It will depend upon the circumstances whether this opportunity will be best afforded before the transmigrants leave the ship, or after they have been conditionally disembarked for the purpose with the approval of the Secretary of State. Where the latter course is desired, application must be made to the Secretary of State for his approval of the arrangements for the control and safe custody of the transmigrants under the rules† as to conditional disembarkation made under section 2 (2) of the Act. Security must be given that the conditions of this disembarkation will be observed, and may be by bond in the Form No. 4 in Appendix II. The Secretary of State is prepared to accept for this purpose security given on behalf of the master of a ship by the owner, which may be expressed to cover all the ships of that owner landing alien transmigrants at any port or ports where conditional disembarkation may be sanctioned.

25. Next will follow the inspection of the alien immigrants by the Immigration Officer and Medical Inspector. This, according to the Act, must take place on board ship, unless the immigrants are conditionally disembarked for the purpose, the arrangements as to accommodation, maintenance, control, and safe custody of the immigrants having previously been approved by the Secretary of State. Where conditional disembarkation is desired, application for approval may be made in the same way as in the case of transmigrants, and the instructions in the preceding paragraph will apply.

26. In order to insure that the circumstances of an immigrant are fully understood, the Immigration Officer and the Medical Inspector will, in all cases, have at their command the services of a competent interpreter.

27. The Act requires that the inspection shall be made as soon as practicable. The question of what is practicable must depend entirely upon circumstances, and it is impossible to lay down any general rule applicable to all ports further than to say that the Secretary of State is of opinion that it would be unreasonable to expect the inspection, save in very exceptional circumstances, to be conducted between the hours of 8 p.m. and 6 a.m. Further, it must be a matter of arrangement, and must depend upon the provision of conveniences, such as suitable artificial light, etc., whether in any case the inspection by the Medical Inspector can begin as early as 6 a.m. The Secretary of State is anxious to meet the necessities of

† Statutory Rules and Orders, 1905, No. 1325. See *supra*, p. 201.

the traffic by any reasonable arrangements, and will be ready to consider any representations made to him from time to time in regard to any port.

28. Where the immigrants are conditionally disembarked for the purpose of inspection, the arrangements will, as has already been stated, be subject to the approval of the Secretary of State; and where the inspection takes place on board ship, it is expected by the Secretary of State that proper arrangements will be made to enable the inspection to be efficient, and to facilitate the work of the Immigration Officer and Medical Inspector. It is impossible to set out in this memorandum all the details of such arrangements, but it may be said generally that some system of control will have to be established in each case which will prevent the immigrants who have been given leave to land from mixing again with those who have not yet passed. Further, where it is necessary (as it may be in some cases) for the Medical Inspector to make a somewhat close examination, he must be enabled to make this examination apart from the rest of the immigrants.

29. The inspection by the Immigration Officer and Medical Inspector will take place concurrently, so as to avoid loss of time. Leave to land will be given by the Immigration Officer alone, and will be given verbally to the immigrant, who will then be free. Where leave is withheld, the immigrant will be handed the prescribed notice of refusal,[†] setting out the grounds upon which he has been considered undesirable and stating that he has the right of appeal; and the counterpart of this notice will be handed to the master of the ship.

30. If the rejected immigrant, or the owner, agent, or master of the ship desires to appeal to the Immigration Board, notice of appeal must be given, where practicable, to the Immigration Officer before he leaves the ship or other place of inspection; but the master, owner, or agent, may, and shall if required by an immigrant, within 24 hours after the refusal of leave to land give written notice of appeal either by sending to the Immigration Officer a notice in the prescribed Form,[§] or by sending a similar notice to the nearest Custom House or Customs Watch-house.

31. Provision has been made by the Secretary of State for the establishment of an Immigration Board room in the most convenient situation available at every immigration port, and where an immigrant, or master, owner, or agent of the ship appeals, the immigrant shall, unless otherwise ordered, be disembarked for the purpose of being brought before the Board, and shall be dealt with as conditionally disembarked until leave to land has been given or he has re-embarked for the purpose of leaving the United Kingdom. The provisions in the rules referring to conditional disembarkation will apply in every such case, and also the direction which has been given under section 7 (3) of the Act as to the custody of immigrants in such circumstances.||

[†] Form No. 2 in Appendix to Statutory Rules and Orders, 1905, No. 1325. See *supra*, p. 206.

[§] Form No. 3 in Appendix to Statutory Rules and Orders, 1905, No. 1325. See *supra*, p. 207.

|| Statutory Rules and Orders, 1905, No. 1326. See *supra*, p. 192.

Bonds.

32. Security may be required —

- (1) under section 2 (2) for conditional disembarkation ;
- (2) under section 1 (4) for exemption from inspection ;
- (3) under section 8 (1) (b) for transmigrants.

33. The bonds for these purposes have been dealt with in previous paragraphs of this memorandum, and, with regard to them generally, the Secretary of State has laid down the following lines:

- (a) That there should in each case be one principal and two sureties.
- (b) That the amount of the bond for conditional disembarkation should vary from £500 to £1,000 according to the average amount of alien traffic.
- (c) That the amount of the bond for exemption from inspection or in respect of transmigrants should vary from £2,000 to £5,000 according to the extent of the exemption or of the traffic.
- (d) That the penalty for a breach of any bond should, pending further experience, be a sum not exceeding £20 per head.

Meaning of "Undesirable Immigrant."

34. Section 1 (3) of the Act provides that an immigrant is to be considered an undesirable immigrant :

- (a) if he cannot show that he has in his possession or is in a position to obtain the means of decently supporting himself and his dependents, if any ; or
- (b) if he is a lunatic or an idiot, or owing to any disease or infirmity appears likely to become a charge upon the rates, or otherwise a detriment to the public ; or
- (c) if he has been sentenced in a foreign country with which there is an extradition treaty for a crime, not being an offence of a political character, which is as respects that country, an extradition crime within the meaning of the Extradition Act, 1870 ; or
- (d) if an expulsion order under this Act has been made in his case.

35. The requirements mentioned in clauses (b), (c), and (d) are absolute requirements, irrespective of the question of means. With respect to the question of "means" the Acts throws on the alien the burden of proving compliance with one or other of two requirements. As regards the first alternative requirement, namely, that he *has* means in his possession for decently supporting himself and his family, the Secretary of State, as at present advised, thinks that the test should be that the immigrant is possessed of £5, with an additional £2 for each dependent, if any, accompanying him. If an immigrant produces to the Immigration Officer the above-mentioned sum or sums, and the officer has no reason to suppose that the money has been furnished to him merely for the purpose of obtaining leave to land and is not really his own money, the immigrant will be considered to have satisfied the Act so far as relates to "means."

36. As regards the second alternative requirement, if the immigrant cannot show that he has money of his own to the amount mentioned above, leave to land will in every case be a matter to be decided, after further inquiry, according to the discretion of the Immigration Officer. His inquiries will be assisted by the forms which every immigrant will be required to fill up. The alien has to satisfy the officer that he is in a position to obtain the means of *decently* supporting himself and his family. The Immigration Officer will have to inquire what funds the alien has to start with, and whether he has a definite trade or occupation. In the case of an alien having a definite trade, the officer will have to consider the state of the labour market in that trade, unless the alien has a definite offer of work at a fair wage. He will be kept furnished so far as possible with information bearing on the prevailing conditions of employment. The officer will also have to inquire as to whether the alien has any proof of competency in his trade, *e.g.*, a seaman could produce his last discharge certificate. Another point for consideration will be whether the alien has any knowledge of the English language. Ignorance of that language will not necessarily be a ground for exclusion, but regard will have to be paid to the conditions as to language obtaining in the immigrant's proposed place of residence or proposed trade. The Immigration Officers will make all necessary inquiries to the best of their ability, and will then decide whether or not to give leave to land, their decision being subject to the right of appeal to the Immigration Board.

37. It is to be noted that the Act provides further that leave to land shall not be refused, on the ground of want of means or the probability of his becoming a charge on the rates, to any immigrant who *proves* that he is seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds, or for an offence of a political character, or persecution involving danger of imprisonment or danger to life or limb, on account of religious belief.

Home Office, Whitehall,
February, 1906.

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